

NO. 85-57812

KENNETH MUNN AND WIFE, IN THE DISTRICT COURT OF  
DOLORIS MUNN

VS. HARRIS COUNTY, T E X A S

PHILIP MORRIS,  
INCORPORATED,  
ET AL. 215TH JUDICIAL DISTRICT

DEPOSITION OF  
DR. FREDERICK B. GILLER  
VOLUME II

Witness in the above-styled Cause, called by the  
Plaintiffs, taken before Alice A. Janetsky,  
Certified Shorthand Reporter for the State of Texas,  
at the South Texas College of Law, 1303 San Jacinto  
Street in Houston, before the Master in Chancery,  
Professor Al Taylor, in Houston, Harris County,  
Texas, commencing at 9:00 a.m. on the 7th day of  
July, 1986, pursuant to Court Order, Order of  
Reference, and Stipulations of Counsel.

**COPY**

Alice A. Janetsky, CSR, RPR  
Official Reporter, 215th District Court  
4400 Memorial Drive, No. 1048  
Houston, Texas 77007  
(7134) 221.6384 (713) 868 6976

ALICE A. JANETSKY, CSR, RPR

689315706

1

A P P E A R A N C E S

2

3

COUNSEL FOR PLAINTIFFS:

4

Mr. W. W. Watkins  
Abraham, Watkins, Nichols, Ballard,  
Onstad & Friend  
800 Commerce Street  
Houston, Texas 77002

5

6

7

Mr. W. E. Townsley  
Mr. Dale K. Hanks  
Townsley, Bush, Lewis & Ramsey  
3550 Fannin Street  
Beaumont, Texas

8

9

10

Scanio, Teer & Cos  
P. O. Box 249  
Bayside, Texas 79377

11

12

Mr. Richard La Garde  
Fisher, Gallagher, Perrin & Lewis  
Allied Bank Plaza 70th Floor  
1000 Louisiana  
Houston, Texas 77002

13

14

15

COUNSEL FOR DEFENDANTS:

16

Philip Morris,  
Incorporated

Keith Kebodeaux  
Orgain, Bell & Tucker  
470 Orleans Street  
Beaumont, Texas 77701

17

18

19

Gene E. Voigts  
Shook, Hardy & Bacon  
20th Floor Mercantile Bank Tower  
1101 Walnut  
Kansas City, Missouri 64106

20

21

22

James J. Sandman  
Arnold & Porter

23

24

R. J. Reynolds  
Tobacco Company

Mr. Richard H. Caldwell  
Mayor, Day & Caldwell  
1900 Republic Bank Center  
Houston, Texas 77002

25

ALICE A. JANETSKY, CSR, RPR

689315707

|    |                                    |                                  |
|----|------------------------------------|----------------------------------|
| 1  |                                    | Mr. Richard G. Stuhan            |
| 2  |                                    | Mr. Peter J. Biersteker          |
| 3  |                                    | Jones, Day, Reavis & Pogue       |
| 4  |                                    | 1700 Huntington Building         |
| 5  |                                    | Cleveland, Ohio 44115            |
| 6  | American Brands                    | Ms. Marcia Graham                |
| 7  |                                    | Andrews & Kurth                  |
| 8  |                                    | 4200 Texas Commerce Tower        |
| 9  |                                    | Houston, Texas 77002             |
| 10 | Brown & Williamson Tobacco Company | Mr. Paul E. Stallings            |
| 11 |                                    | Mr. B. Lee Ware                  |
| 12 |                                    | Vinson & Elkins                  |
| 13 |                                    | 1001 Fannin Street               |
| 14 |                                    | 3120 First City Tower            |
| 15 |                                    | Houston, Texas 77002-6760        |
| 16 |                                    | Mr. Frank C. Jones               |
| 17 |                                    | Mr. Gordon Smith                 |
| 18 |                                    | King & Spaulding                 |
| 19 |                                    | 2500 Trust Company Tower         |
| 20 |                                    | Atlanta, Georgia 30303           |
| 21 | Lorillard, Inc.                    | Mr. John G. Bissell              |
| 22 |                                    | Strong, Pipkin, Nelson & Bissell |
| 23 |                                    | 14th Floor San Jacinto Bldg.     |
| 24 |                                    | 595 Orleans                      |
| 25 |                                    | Beaumont, Texas                  |
| 26 | Liggett Group, Inc.                | Mr. Michael W. Hogue             |
| 27 | Liggett & Meyers Tobacco Company   | Mr. F. K. Decker                 |
| 28 |                                    | Webster & Sheffield              |
| 29 |                                    | 601 Milam, Suite 1850            |
| 30 |                                    | Texas Commerce Tower             |
| 31 |                                    | Houston, Texas 77002             |
| 32 |                                    | Sheffield                        |
| 33 |                                    | 1 Rockefeller Pl.                |
| 34 |                                    | New York, N.Y.                   |
| 35 |                                    | 10020                            |
| 36 | The Tobacco Institute              | Ms. Margaret Alexander           |
| 37 |                                    | Covington & Burling              |
| 38 |                                    |                                  |
| 39 |                                    |                                  |
| 40 |                                    |                                  |
| 41 |                                    |                                  |
| 42 |                                    |                                  |
| 43 | Council for Tobacco Research       | Mr. Mark E. James                |
| 44 |                                    | Mr. Marc D. Murr                 |
| 45 |                                    | Bracewell & Patterson            |
| 46 |                                    | 2900 South Tower, Pannzoil Place |
| 47 |                                    | Houston, Texas 77002             |

ALICE A. JANETSKY, CSR, RPR

689315708

1 Council for Mr. John G. Koeltl  
2 Tobacco Research, Debevoise & Plimpton  
Continued

3  
4 FOR THE WITNESS:

5 Dr. Giller Mr. Dana G. Kirk  
6 Kirk & Carrigan  
7 3900 One Shell Plaza  
Houston, Texas 77002

8 Mr. Robert K. Ruskin, P. C.  
9 Mr. Ron Levine  
Herrick, Feinstein  
2 Park Avenue  
10 New York 10016

11 Also Present:

12 Mr. Frank Parrish  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

ALICE A. JANETSKY, CSR, RPR

689315709

S T I P U L A T I O N S

IT WAS STIPULATED AND AGREED by and between counsel, that the deposition was to be taken under the Texas Rules of Civil Procedure and the Order of Reference.

IT WAS FURTHER STIPULATED AND AGREED that the witness was to read and sign both the non-in camera portion and the in camera portion of the deposition before any notary authorized to take oaths in the location where the witness then was.

IT WAS FURTHER STIPULATED AND AGREED that all portions of the deposition and exhibits were subject to a non-dissemination agreement, and that the in camera portion of the deposition and exhibits were to be sealed by the Court, until further order of the Court; and further that if the original were not signed and filed with the Court by the time of trial, that a copy could be filed and used as fully as though signed.

ALICE A. JANETSKY, CSR, RPR

689315710

1 did I understand you to say that?

2 A That was my understanding.

3 Q And the law firm that Mr. Decker was with?

4 A Webster & Sheffield. Might I just say that I  
5 believe there were changes in what law firm  
6 Mr. Jacobs was associated with over the  
7 years. In 1971, I don't believe he was with  
8 the firm of Jacob, Medinger and Finnegan.  
9 It may have been some other firm.

10 Q I believe you said Janet Brown and the  
11 Chadbourne firm represented American Tobacco  
12 Company?

13 A Yes.

14 Q Donald Hoel?

15 A Shook, Hardy & Bacon, what company did they  
16 represent.

17 A Shook, Hardy & Bacon represented three,  
18 companies, Lorillard, Philip Morris and Brown  
19 and Williamson.

20 Q Did you have this same committee that was  
21 involved when you were project officer at 3i  
22 under the contract between 3i and Covington  
23 and Burling?

24 A Yes.

25 Q Same people? You mentioned in your testimony

ALICE A. JANETSKY, CSR, RPR

689315711

9

1 testimony last week that in the Literature  
2 Retrieval Division of CTR there was a 1982  
3 conversion to another computer system; is  
4 that correct?

5 A I believe I mentioned that the the  
6 conversion began around in 1982.

7 Q Did you discontinue using the electronic data,  
8 processing company that you had used all  
9 along with LRD?

10 A In 1982?

11 Q Or did you phase it out? I mean what I am  
12 trying to get at is did you discontinue using  
13 your old source?

14 A We did not discontinue using our old source,  
15 no.

16 Q Did you start using an additional source?

17 A In 1982 we made a number of changes to the  
18 computer system.

19 Q Without going into any detail, why don't you  
20 just tell me briefly so a layman could maybe  
21 understand?

22 A At that time we converted our data entry  
23 system, our key punch system that is, to what  
24 is called a on-line data entry system. This  
25 involved the purchase of hardware and

ALICE A. JANETSKY, CSR, RPR

689315712

10

1 software. That activity was unrelated to our  
2 outside data processing center. In addition  
3 we began to convert our search system from a  
4 batch search system to an on-line search  
5 system using another additional data  
6 processing vendor.

7 Q Was that additional data processing vendor  
8 BRS?

9 A Yes.

10 Q So you started using BRS in what year?

11 A We started to use BRS to search the LS, Inc.  
12 data base, so that would have been sometime  
13 late in 1983.

14 A However, prior to that time the research and  
15 development in connection with this  
16 conversion, if you will, began.

17 Q I notice that there was research and  
18 development of some \$50,000 to \$60,000. That  
19 was the purpose of it in 1982 in the budget  
20 of LRD?

21 A I don't recall, probably.

22 Q What does BRS stand for

23 A Bibliographic Retrieval Services.

24 Q Isn't that a company that maintains a data  
25 bank that the public can subscribe to?

ALICE A. JANETSKY, CSR, RPR

689315713



11

- 1 A That is correct.
- 2 Q They will also construct private data banks
- 3 for customers?
- 4 A That's correct.
- 5 Q So in effect you had BRS to construct the
- 6 private data bank for the tobacco industry?
- 7 A We had BRS construct a private data base of
- 8 the data base that we had for the lawyers
- 9 beginning at 3i, going through LRD and
- 10 whatever documents that were contained as of
- 11 the time it was converted.
- 12 Q Has the 3i data been placed into the BRS
- 13 data base?
- 14 A Yes.
- 15 Q Has the LRD data compiled 1971 through 1983
- 16 been placed in the BRS data base?
- 17 A Yes.
- 18 Q Who had access to the BRS data base at this
- 19 time?
- 20 A LS, Inc. and one of the law firms.
- 21 Q Which firm is that?
- 22 A Shook, Hardy and Bacon.
- 23 Q The other law firms did not have access to
- 24 it?
- 25 A That is correct.

ALICE A. JANETSKY, CSR, RPR

689315714

12

1 Q Whoever knows the code to access it, would be  
2 able to access it, would they not?

3 A Yes.

4 Q You wouldn't care to give that to me this  
5 morning would you?

6 A No.

7 Q Last week we talked about users of the  
8 Literature Retrieval Division data. And you  
9 stated that the four law firms were users,  
10 that there had been some user requests for  
11 the Tobacco Institute and for some of the  
12 people sometimes at CTR?

13 Q Did I recall your testimony correctly?

14 A I think I testified that the users during the  
15 time LRD was at CTR were the law firms and  
16 their co-counsel, the legal staffs, of their  
17 clients and the Tobacco Institute. Did any  
18 Texas lawyers have access to it?

19 A During the LRD period?

20 Q Yes.

21 A I don't know of any.

22 Q What about during the LS, Inc. period?

23 A Yes.

24 Q Can the Texas lawyers then get on-line with  
25 LRD, or do they have to go through LS, Inc.?

ALICE A. JANETSKY, CSR, RPR

689315715

13

1 A They, as I have already mentioned, except for  
2 Shook, Hardy and Bacon, all of the firms that  
3 use the system, come through LS, Inc.

4 Q When you gave me the list of users of the  
5 Literature retrieval division when it was at  
6 CTR, you omitted the people at CTR, itself.  
7 They were not authorized users?

8 A CRS's relationship with LRD was different  
9 than the relationship that LRD had with other  
10 users. There was an exchange of information  
11 as I think I mentioned, an exchange of the  
12 publicly available articles.

13 Q I am talking about, I think, though the user  
14 requests, where you actually used the  
15 material that you collected, analyzed and  
16 stored. The use of it as I understood from  
17 your testimony last week is that certain  
18 individuals that you named had, including Mr.  
19 Jenkins and maybe Dr. Hockett, that you had  
20 provided information to them at times; is  
21 that correct?

22 A I think I mentioned Dr. Hockett and Mr. Ramm  
23 and Mr. Jenkins, as well.

24 Q So that if they made a request, you would  
25 fill it?

ALICE A. JANETSKY, CSR, RPR

689315716

14

1 MR. RUSKIN:: You are asking  
2 that hypothetically, or are you  
3 asking whether that happened.

4 Q Well, just asking whether, if they made a  
5 request they will fill it. Wouldn't you?

6 MR. RUSKIN:: That assumes  
7 something.

8 Q He has already told me that they made  
9 requests.

10 MR. RUSKIN:: If he has as  
11 already testified they filled it,  
12 he has answered the question.

13 MR. KIRK: What is the  
14 question again, Bill?

15 Q When the people that you have mentioned at  
16 CTR made a request for this information, then  
17 you would fill that request wouldn't you?

18 A When Mr. Ramm asked a question, I filled it.  
19 Dr. Hockett, as I recall never asked for this  
20 information, but received it as a result of  
21 an attorney requesting he be sent it.

22 Q Who requested that it be sent to Dr.  
23 Hockett?

24 A I believe that was Mr. Hoel.

25 Q He is with Shook, Hardy's firm?

ALICE A. JANETSKY, CSR, RPR

689315717

15

1 A Yes.

2 Q Well, what about the request made by Mr.  
3 Jenkins?

4 A The requests made by Jenkins were for publicly  
5 available articles.

6 Q I am talking about on the user form.

7 A I don't believe Mr. Jenkins made any other  
8 requests.

9 Q Now Mr. Ramm, what was his title at CTR; do  
10 you recall?

11 A At the time when I became administrator of  
12 LRD, I believe Mr. Ramm was the Chairman of  
13 CTR.

14 Q And had he been, or he was with R. J.  
15 Reynolds Company, was he not, his company  
16 affiliation?

17 A I think he had been with R. J. Reynolds.

18 Q Was Mr. Jenkins furnished any of this other  
19 material, besides these publicly available  
20 publications?

21 A Yes.

22 Q Okay. What type of other material was  
23 furnished to Mr. Jenkins, generally?

24 A Mr. Jenkins received copies of microfilm that  
25 contained some of the information that was

ALICE A. JANETSKY, CSR, RPR

689315718

16

1 stored at LRD.

2 Q Was this done on a regular basis?

3 A Yes.

4 Q Did you microfilm all of the data there at  
5 LRD?

6 A Yes.

7 Q Did you furnish copies of it to various  
8 users?

9 A Yes.

10 Q And you also furnished it to Mr. Jenkins?

11 A Yes.

12 Q Did you know where Mr. Jenkins kept it after  
13 he got it?

14 A He kept it in a file on CTR's premises.

15 Q Was a copy of this microfilm deposited in any  
16 of the safety deposit boxes and vaults?

17 A No.

18 Q Who told you to furnish Mr. Jenkins copies of  
19 the microfilm?

20 A The lawyers on the committee.

21 Q Did they tell you why you were to furnish a  
22 copy of the the microfilm to Mr. Jenkins?

23 A No.

24 Q Did you furnish a copy of it to the Tobacco  
25 Institute, the microfilm?

ALICE A. JANETSKY, CSR, RPR

689315719

17

1 A Yes.

2 Q During what years did you furnish the  
3 microfilm to the users and Mr. Jenkins?

4 MR. RUSKIN:: To all of the  
5 users and Mr. Jenkins?

6 Q Or to any of the users?

7 MR. KIRK: But they are  
8 different at different periods  
9 That's why I think the question  
10 should be broken down.

11 Q During 1971 to 1983.

12 Q Did you furnish microfilm during that entire  
13 period of time?

14 MR. RUSKIN:: To whom? The  
15 users might differ with the  
16 period.

17 Q Well, say the authorized users, did you  
18 furnish it through --

19 MR. RUSKIN:: 1971 to April  
20 of 1983 to every user?

21 Q Yes.

22 A Yes.

23 MR. RUSKIN:: You are saying,  
24 was the microfilm furnished during  
25 that entire period to everyone of

ALICE A. JANETSKY, CSR, RPR

689315720

18

1 the authorized users?

2 Q I think of just the four firms as being  
3 authorized users.

4 MR. RUSKIN:: Now, you have  
5 gone into the users. Are you  
6 talking about the law firms or are  
7 you talking about companies.

8 Q Well, I will put it this way between 1971 to  
9 1983 tell me everybody you furnished  
10 microfilm to.

11 MR. KIRK: I am sorry.  
12 Microfilm holds data. That was  
13 part of the data base. What are  
14 you talking about? I can imagine  
15 there may be--

16 Q Maybe we need to go back. We have been  
17 talking about the microfilm for sometime.  
18 Why don't you describe to me the data which  
19 you microfilmed?

20 MR. KIRK: And you mean by  
21 that in general category, not in  
22 specifics of the data microfilm?

23 Q Yes, you don't need to go into the specifics.  
24 Explain the nature of the information.

25 A We would microfilm copies of articles that

ALICE A. JANETSKY, CSR, RPR

689315721



19  
1 had been selected, analyzed and indexed. We  
2 also microfilm copies of the abstract and  
3 index terms.  
4 Q Anything else that was furnished to Mr.  
5 Jenkins?  
6 Q Was anything else microfilmed that was  
7 furnished to Mr. Jenkins?  
8 A No.  
9 Q So that if we had the microfilm you furnished  
10 to Mr. Jenkins, then we would have microfilm  
11 of the articles, of the abstracts of the  
12 articles, and the index identification of the  
13 articles for the period of 1971 to 1983?  
14 A No.  
15 Q Okay. Why don't you describe to me what we  
16 would have if we had the microfilm that you  
17 furnished Mr. Jenkins during the 1971 to 1983  
18 years?  
19 A I don't recall when Mr. Jenkins started  
20 receiving microfilm. And I don't recall when  
21 he stopped receiving microfilm. But the  
22 period of time that he received it was for a  
23 shorter period than between 1981 and 1983.  
24 MR. RUSKIN: '71.  
25 A '71, excuse me.

ALICE A. JANETSKY, CSR, RPR

689315722

20

1 MR. RUSKIN: 1983, to April  
2 of 1983.

3 Q All right. So you don't know how many years  
4 it was that Mr. Jenkins received this  
5 microfilm?

6 A No.

7 Q Well, would the records indicate?

8 A I don't know.

9 Q During this period of time did the Tobacco  
10 Institute get all of the microfilm for all of  
11 those years?

12 A No.

13 Q Okay. What years did the Tobacco Institute  
14 receive microfilm of this information?

15 A I don't remember.

16 Q Would it have been the same years that Mr.  
17 Jenkins received it?

18 A No.

19 Q How would it have been different?

20 A As I recall, when I became administrator of  
21 LRD, the Tobacco Institute was receiving  
22 copies of this microfilm.

23 A And I recall that years later, I was told to  
24 start sending copies of this microfilm to Mr.  
25 Jenkins. I don't recall when either the

ALICE A. JANETSKY, CSR, RPR

689315723

21

1 Tobacco Institute or Mr. Jenkins stopped  
2 receiving the microfilm.

3 Q Why did they stop receiving it?

4 A Because the lawyers told me to stop sending  
5 it.

6 Q So at some point while you were still with  
7 the Literature Retrieval Division of CTR, the  
8 lawyers told you to stop sending the  
9 microfilm to Mr. Jenkins?

10 A To the best of my recollection, yes.

11 Q They, at the same time, they also told you to  
12 stop sending it to the Tobacco Institute?

13 A Yes.

14 Q Are you saying that this microfilm contained  
15 nothing other than the articles themselves,  
16 the abstracts of the articles and the index  
17 information identifications?

18 A Yes.

19 Q Do you know to what use Mr. Jenkins put this  
20 information on microfilm?

21 A No.

22 Q Do you know if the first time it was in  
23 connection with with pending litigation or  
24 anticipated litigation?

25 A No.

ALICE A. JANETSKY, CSR, RPR

689315724

22

1 Q Do you know to what use the Tobacco Institute  
2 put this microfilm data?

3 A No.

4 Q Do you know whether or not it was related to  
5 pending litigation or anticipated litigation  
6 involving products liability lawsuits?

7 A No.

8 Q In doing this microfilming over a period of  
9 years at the Literature Retrieval Division,  
10 did you microfilm it as it was received and  
11 prepared?

12 A That was our goal.

13 Q Did the microfilm ever synthesize any of the  
14 information?

15 MR. RUSKIN:: I don't  
16 understand the question.

17 Q Well, say for example, you were doing some  
18 microfilm in respect to an article that was  
19 received and analyzed and indexed in 1975,  
20 and it related to an article that you had  
21 done the same thing for 1973. Did you ever  
22 synthesize your information on microfilm?

23 MR. KIRK: Relate that  
24 information to the earlier  
25 information?

ALICE A. JANETSKY, CSR, RPR

689315725

23

1 Q Or have the microfilm where you just ended up  
2 adding to an existing microfilm, so if a  
3 person then is looking at this information  
4 they would see not only the article, and the  
5 abstract, its index information, but also see  
6 it for the other periods on related subjects.

7 MR. RUSKIN:: On the same  
8 piece of microfilm?

9 Q Yes.

10 A I don't understand the question.

11 Q On the same piece of microfilm.

12 A The answer is no.

13 Q Did you from time to time integrate any of  
14 your microfilm to do additional microfilming  
15 of the same data, but to also bring it  
16 together for certain index numbers or subject  
17 matters?

18 A Again, Mr. Townsley, so we understand each  
19 other, are you talking about at any point on  
20 a microfilm was there consolidated earlier  
21 information that had been collected.

22 Q Yes?

23 A On this same microfilm, concerning the  
24 subject matter?

25 Q Or any type of consolidation?

24

1 A The only consolidation is, as you put it that  
2 from time to time certain abstracts cross  
3 referenced other articles by a document  
4 number. This was part of the abstract. And  
5 so that information was on the microfilm.

6 Q I guess what I am trying to get at is, when  
7 you microfilmed these article abstracts and  
8 index information identification did you do  
9 it on a per piece basis with your microfilm,  
10 or did you ever collect a lot of the the bits  
11 of the microfilm together into one continuous  
12 piece?

13 A We did it on a piece basis.

14 Q So that it was more or less in chronological  
15 order as you prepared it?

16 A I had said that was our goal. But in fact,  
17 that did not occur.

18 Q In the strictly Literature Retrieval  
19 operation, did you do anything more than  
20 collect the published information, abstract  
21 it, index it, and store it, so it could be  
22 retrieved? Is that all you did with it?

23 A Yes, and of course we retrieved it on demand.

24 Q Was the information gathered at 3i put on  
25 microfilm?

25

1 A Yes.

2 Q Who was furnished copies of that microfilm?

3 A During the --

4 MR. KIRK: During the 3i  
5 period.

6 Q Any period even up to today?

7 A I don't--remember who was furnished copies of  
8 this microfilm at 3i.

9 Q After it came to LRD, were any copies made of  
10 it?

11 A Of the microfilm.

12 Q Yes? That is of the microfilm that came from  
13 3i, were copies made. Or were copies made  
14 after, or was the material microfilmed after  
15 it came to LRD?

16 MR. RUSKIN:: He said it was  
17 microfilmed at LRD. I don't  
18 understand the question. I am  
19 sure he said it was as  
20 microfilmed. And now you are  
21 asking was it microfilmed at LRD.  
22 He has said yes.

23 Q You said it was microfilmed at LRD. Had you  
24 received the microfilmed material of 3i at  
25 LRD?

26

1 A Yes.

2 Q Where was it kept then?

3 A Kept on LRD 's premises.

4 Q It wasn't put in any of the safety deposit  
5 boxes or vaults?

6 A No.

7 Q Did you ever make any copies of it?

8 MR. KIRK: Of the microfilm?

9 A Yes.

10 Q Who did you furnish copies to?

11 A To the various authorized law firms.

12 Q Okay.

13 A And others. There was a shipping list, if  
14 you will. This list indicated who was to  
15 receive a copy of the microfilm.

16 Q Who is on that list.

17 A Today?

18 Q Who received, other than the four law firms,  
19 who received the copies of it?

20 MR. KIRK: Microfilm.

21 A I just said I don't -- -- recall who received  
22 copies of the microfilm.

23 Q But it's on a shipping list?

24 MR. RUSKIN: I think what we  
25 are confusing, he said he doesn't

ALICE A. JANETSKY, CSR, RPR

689315729



27

1 recall when the microfilm was  
2 prepared, who received what LRD  
3 had. If you are talking about  
4 additional microfilm, that's a  
5 different story, and he is  
6 confused as to what you are asking  
7 him happened during the earlier  
8 period when microfilm was made.  
9 From the time of the microfilm,  
10 there may have been additional  
11 material filmed at LRD.

12 Q I meant to ask you, Dr. Giller, you had  
13 testified that copies were made at LRD of  
14 3i material.

15 MR. KIRK: Microfilm?

16 A I did not say that.

17 Q Okay. That's probably our breakdown. So  
18 after this microfilm came from 3i to the  
19 Literature Retrieval Division of CTR, as far  
20 as you know then, no copies were ever made of  
21 it, additional ones?

22 A So as far as I know, yes.

23 Q But copies were made of it when it was at 3i?

24 A Yes.

25 Q Did the Tobacco Institute receive a copy of

ALICE A. JANETSKY, CSR, RPR

689315730

28

1 it?

2 A I don't remember.

3 Q Did Mr. Jenkins receive a copy of it?

4 A I don't remember.

5 Q If you were going to find out who got copies  
6 32 of it, what records would you go to?

7 A I would have to find a shipping list that 3i 1-

8 Q -- used? Well, was the shipping list among  
9 the papers that you turned over to Simon  
10 O'Shea back in 1983?

11 A We turned everything back to Simon O'Shea. I  
12 can't recall whether that particular item was  
13 included or not.

14 Q It was part of the records of 3i; is that  
15 correct?

16 A Yes.

17 Q When you were at the Literature Retrieval  
18 Division of CTR, And there was a user  
19 request, would that request generally be in  
20 writing?

21 A No. It generally would be oral.

22 Q And what kind of record would be made of the  
23 request?

24 A There was a form used which was called a user  
25 request form, that the individual who took

ALICE A. JANETSKY, CSR, RPR 689315731

29

1 the request used to record the request and  
2 the filling of the request.

3 Q Filling the request?

4 Q A person then could look at the information  
5 on this completed form and respond to the  
6 request?

7 A The information that got onto the request was  
8 the information that the individual who  
9 worked for LRD needed in order to respond to  
10 the request.

11 Q Did you sometimes get requests in writing?

12 A I don't recall.

13 Q How frequently did you supply the additional  
14 microfilm material to the users?

15 A Perhaps once or twice a month.

16 Q Did you have any other type of information  
17 that you furnished from time to time to the  
18 users without a request being made for it?

19 A I can't recall any.

20 Q What type of supervisors did you maintain in  
21 respect to a user request, personal  
22 supervision on your part?

23 A At the outset when I became administrator I  
24 was directing the literature operation  
25 dealing firsthand with the individuals who

ALICE A. JANETSKY, CSR, RPR

689315732

30

1           were making the requests. As time went on  
2           then some of this work was assigned to  
3           others. And eventually I was not involved on  
4           a regular basis in taking requests.

5       Q   What about after the material, the response,  
6           was completed and it was ready to be sent to  
7           the user, did you have any role in reviewing  
8           the material that was sent off?

9       A   Not on a regular basis.

10      Q   In the earlier years did you always review  
11           it?

12      A   I can't say that either.

13      Q   When material was furnished to a user in what  
14           form would it be?

15      A   It would be in the form of copies of the  
16           articles. It also could be in the form of  
17           copies of the article as well as of the  
18           abstract and index terms. It also could be  
19           in the form of a computer print out, listing  
20           out the articles and in each of those  
21           instances, the material that we sent might  
22           have comments written on them, of our  
23           analyses that we did after researching the  
24           information.

25      Q   Did you ever do any of the analyses,

ALICE A. JANETSKY, CSR, RPR

689315733

1           yourself?

2       A    Yes.

3       Q    Were there any guidelines for doing the  
4           analyses?

5       A    Yes.

6       Q    In writing?

7       A    In writing and oral instructions.

8       Q    When it was in writing, would it be in a  
9           letter form, or how would it come? How  
10          would you know how to analyze it the way a  
11          user wanted?

12      A    There was a document. And that document  
13          describes how articles are to be analyzed  
14          and indexed.

15      Q    Well, now I was talking about the analysis  
16          and comments that you prepared after you had  
17          already collected this data?

18      A    Those analyses generally resulted from oral  
19          instructions.

20      Q    Were there sometimes written instructions?

21      A    I believe there were, but I can't recall any  
22          specific ones.

23      Q    Would the oral instructions be noted on these  
24          information sheets everytime you had a user  
25          request?

32

1 A Not necessarily.

2 Q Well, the user then would have to know the  
3 personnel that did the analysis then; is that  
4 correct?

5 A Yes.

6 Q Who did you have doing analyses at LRD?

7 MR. RUSKIN: During what  
8 period.

9 Q '71 to '83?

10 A I have no way of recalling the names of the  
11 people who were doing that work over all  
12 those years.

13 Q Well, during the early years who did it when  
14 it was of relatively small volume?

15 A I did it, as I have said. Someone named  
16 Phyllis Nash worked on it, also.

17 A For a while, a man named Komendantof, Andrew  
18 Komendantof worked on it. I don't recall  
19 any other names at this date.

20 Q What about during the last 3 or 4 years  
21 before the Literature Retrieval Division  
22 moved it's stuff to LS, Inc.?

23 Q Who were the people that were doing these  
24 analyses?

25 A I can't recall the names. Different people

ALICE A. JANETSKY, CSR, RPR

689315735

33

1 worked on that or came to work for LRD and  
2 left LRD. There were changes in the group  
3 of people who did that over the years.

4 Q Did they all sign nondissemination or  
5 nondisclosure agreement?

6 A Yes.

7 Q Did you maintain maintain copies of those  
8 agreements for the people that worked under  
9 under you?

10 A Yes.

11 Q And you now have them at LS, Inc.

12 A Yes.

13 Q People that did this type of analysis, they  
14 would have to have a background in science;  
15 would they not?

16 A Yes.

17 Q And I noticed that LRD did a lot of  
18 recruiting for personnel and spent a  
19 considerable amount of money. Did you  
20 recruit, yourself, the people to handle these  
21 assignments, the analyses?

22 A Yes.

23 Q What was your criteria or qualifications for  
24 somebody to do this?

25 MR. RUSKIN: Could we have

ALICE A. JANETSKY, CSR, RPR

689315736

1 a, Judge, can we have a short  
2 break.

3 THE MASTER: Yes, we will take  
4 ten minutes.

5 (short recess)

6 MR. RUSKIN:: Before we  
7 continue with the questioning the  
8 witness would like to make a  
9 statement about earlier testimony  
10 that he gave in response to Mr.  
11 Townsley's questions.

12 A I believe I answered his question  
13 incorrectly. I believe Mr. Townsley asked if  
14 there were any users of the system in Texas.  
15 And I incorrectly said, yes. There are none.

16 Q I am very disappointed to hear that. You  
17 know, with the energy crisis and everything,  
18 we have a lot of facilities, great  
19 personnel, and lots of equipment. I want you  
20 to know we could do a wonderful job down  
21 here; couldn't we Dana?

22 MR. KIRK: Yes, no place like  
23 Texas.

24 A We generally advertised for individuals who  
25 had a bio-medical background, and perhaps



40

1           that was prepared by the Literature Retrieval  
2           Division of CTR was not placed in the safety  
3           deposit boxes. Did you have fire safe  
4           containers on your premises to protect this  
5           microfilm?

6       A    No.

7       Q    You mean it was exposed to the elements there,  
8           like any other files?

9       A    Yes.

10      Q    Wouldn't that have been put into the safety  
11           deposit box?

12      A    Simply because the other law firms, rather,  
13           the law firms that were receiving copies of  
14           this material were off our premises. Had we  
15           had an emergency such as a fire, we could  
16           have recovered a number of the copies from  
17           the different law firms. That was not a  
18           concern.

19      Q    At the Irving Trust Company you testified  
20           that you had some boxes or safes or vaults.  
21           I never did understand exactly what you had  
22           over there during the years 1971 to 1983.  
23           Would you explain what was obtained to store  
24           these materials at the Literature Retrieval  
25           Division?

ALICE A. JANETSKY, CSR, RPR

659315738

41

1 MR. KIRK: Bill, I am going  
2 to object. The question was asked  
3 and answered. And I think he  
4 answered rather specifically as to  
5 the specific facilities that he  
6 had at the Irving Trust on the  
7 the first day of the deposit.

8 Q He did not answer as to the capacity or the  
9 nature or the value, also as to whether it's  
10 a vault you could walk in.

11 MR. RUSKIN He would answer  
12 that.

13 MR. KIRK: One more time.  
14 A I don't know as I can recall. Two boxes and  
15 one safe. The thing that distinguished them  
16 was that the boxes had a key, and the safe  
17 had a combination, which is why they were  
18 called what they were. The sizes were -- the  
19 last time I was there was sometime ago, so I  
20 am going to have to remember it but the two  
21 boxes were, would be one by two feet. I  
22 believe the safe was about twice that size,  
23 but I cannot recall the dimensions exactly.

24 Q You mentioned that in the boxes and safe,  
25 one or the other, all it included was your

ALICE A. JANETSKY, CSR, RPR

689315739

42

1 data, I think was the word that you used.  
2 Again, just explain the physical form of this  
3 without going into the contents of the data?

4 A I think I described the physical forms as  
5 being computer tapes and indexes.

6 Q By indexes, what do you mean?

7 A I mean printouts of the terms that were  
8 stored in the computer.

9 Q Were the articles themselves stored in the  
10 computer?

11 A No.

12 Q Just the analyses?

13 MR. RUSKIN: We are talking  
14 about what period now?

15 Q 1971 to 1983?

16 A The analyses were not stored in the computer.  
17 All you have got is the abstract portion of  
18 the analysis.

19 Q It was on microfilm?

20 A And on hard copy.

21 Q Just give me a brief description of the  
22 computer tapes that were there in the safety  
23 deposit box or safe?

24 A The computer tapes there in the box included  
25 a copy of the then current data base as well

ALICE A. JANETSKY, CSR, RPR

689315740

1 as copies of the programs that ran the  
2 computer system.

3 Q I guess I need a lay explanation of what the  
4 data base is?

5 A The data base is the collection of all of the  
6 information that is stored for each document  
7 that we have analyzed and indexed.

8 Q Well, I had understood earlier that the data  
9 base did not include the articles themselves.  
10 Did I misunderstand you?

11 A No, you didn't. When I use the term data  
12 base, in this instance, and I am speaking  
13 about the electronic data base, it is the  
14 specific information that is on the tapes.

15 Q Yes?

16 A Data base could be used in a broader sense  
17 as well.

18 Q Why don't you give us generally the  
19 description of what was in the data base. I  
20 had assumed it was the articles and the  
21 abstracts itself?

22 MR. RUSKIN: Are you going  
23 back to the tapes, referring to  
24 what kind of material was on the  
25 tape, rather than the data base?

ALICE A. JANETSKY, CSR, RPR

689315741

44

1 A The tape contained for each article that was  
2 selected and analyzed, an index. All of the  
3 information that was developed at LRD, with  
4 the exception of the abstract.

5 Q And the abstract was furnished to the off-  
6 premises computer, key punched?

7 A No. The abstract was not key punched.

8 Q Okay. You say the tape contained information  
9 other than the abstract?

10 A That LRD had prepared.

11 Q Okay. Describe that information, the  
12 information other than, just a general  
13 description of that information other than,  
14 the analysis that was on the tape?

15 MR. RUSKIN I think he just  
16 did that. Try it again.

17 A Other than the abstract we, using the  
18 language I think you used earlier, the index  
19 of information. That is to say all the index  
20 terms that were assigned to that article were  
21 stored on the computer tape, for each  
22 article.

23 Q But the article itself it was not stored?

24 A That is correct.

25 Q The article would be on microfilm, and

ALICE A. JANETSKY, CSR, RPR

683315742

45

1 ultimately a hard copy of it?

2 A Yes.

3 Q That was kept at the Literature Retrieval  
4 Division premises?

5 A Yes.

6 Q Was it kept at any other place?

7 A The Retrieval Division was the only place  
8 that I believe had a complete set of the hard  
9 copy. And as I have already noted, there  
10 were various law firms received microfilm  
11 copies of that.

12 Q Where you would have a user request and you  
13 wanted to do a printout, say, of an article  
14 in the analysis, would you do it from the  
15 microfilm?

16 A Not as a rule.

17 Q Now, how would you do it?

18 A I would do it from the hard copy.

19 Q And the hard copy was maintained at the  
20 premises of the Literature Retrieval  
21 Division?

22 A Yes.

23 Q After you had completed your response to a  
24 request, what records would you maintain at  
25 the Literature Retrieval Division of the

ALICE A. JANETSKY, CSR, RPR

689315743

46

1 material that you furnished to the user?

2 A We would maintain a copy of the user request  
3 form that I described earlier, that generally  
4 had noted on it the specifics of the request.

5 Q Would you maintain with that a copy of what  
6 was furnished to the user?

7 A No.

8 Q Did you say that Covington & Burling was a  
9 user even though they weren't a member of the  
10 four firms? Were they also authorized users  
11 of the services of the Literature Retrieval  
12 Division of CTR?

13 A To the best of my recollection they were.

14 Q So if they made a user request, you would  
15 fill it?

16 A Yes.

17 A Again, I would like just to say that I can't  
18 say with accuracy who would and would not  
19 have a list of users at any particular point  
20 in time except that there was a pattern that  
21 certain firms always were on the the list and  
22 exactly whether Covington & Burling was on  
23 the list, I can't recall.

24 Q When someone was removed from the list, who  
25 would advise you?

ALICE A. JANETSKY, CSR, RPR

689315744

47

- 1 A The committee of lawyers.
- 2 Q Would you actually make a list, where you
- 3 could strike out the person who was no longer
- 4 authorized as a user?
- 5 A We will update the list.
- 6 Q Then if you were noticed that a additional
- 7 party was an authorized user, then you would .
- 8 add that person to the list?
- 9 A Yes.
- 10 Q In the users' requests, did you sometimes get
- 11 a request for information on a particular
- 12 person?
- 13 A At any time?
- 14 Q At anytime, just a request on a particular
- 15 person?
- 16 A Yes.
- 17 Q What about a particular organization?
- 18 A Yes.
- 19 Q Would this committee have already furnished
- 20 you the index information about a particular
- 21 person or particular organization?
- 22 A What do you mean by index information.
- 23 Q I understand that in making your analysis and
- 24 the index, you used, you had a guideline,
- 25 another index that had been furnished to you.

ALICE A. JANETSKY, CSR, RPR

689315745



48

1 And I guess what I am trying to get to is  
2 would the person or organization have had an  
3 identification number in this index or  
4 guideline?

5 A If you were analyzing and indexing articles  
6 that had been selected using the lawyers'  
7 selection criteria, and the name of an  
8 individual or the name of an organization was  
9 indexed, then that information would be  
10 available for retrieval. And if it wasn't,  
11 indexed therein, it would not be available  
12 for retrieval.

13 A The selection criteria didn't relate in the  
14 manner that you are describing as to how  
15 articles were selected.

16 Q Did you select and abstract and index this  
17 material essentially the same way you did  
18 when you were at 3i?

19 A Yes.

20 Q You got your Ph.D in 1965, did you not?

21 A Yes.

22 Q What month of '65 was that?

23 A I don't remember.

24 Q You don't remember whether it was in the  
25 summer or the fall?

49

1 A I don't recall.

2 Q You don't recall that you testified that for  
3 several months prior to that time you were  
4 doing part time work for 3i? Is that  
5 correct?

6 A Prior to the time --

7 Q You got your Ph.D?

8 A Yes.

9 Q Was 3i at that time doing essentially the  
10 same things for Covington and Burling as was  
11 done after you became a full time employee?

12 A I don't know.

13 Q You don't know one way or the other?

14 A No, I don't.

15 Q Well, you do know that 3i was collecting and  
16 abstracting and indexing the bio-medical  
17 literature, don't you?

18 A Yes.

19 Q Would they have microfilmed what you did as a  
20 part-time employee?

21 A As a part time employee before I got my  
22 doctorate, I was abstracting and indexing  
23 literature for the 3i company publications  
24 that the 3i company published and sold to the  
25 public. And they did not have anything to do

ALICE A. JANETSKY, CSR, RPR

689315747

50

1 with this project.

2 Q So then I take it that your abstracting work  
3 for 3i before you got your Ph.D was not under  
4 any nondisclosure agreement?

5 A Counsel, I didn't say that

6 Q Did you say it had nothing to do with the  
7 tobacco industry.

8 A No.

9 Q What about your part-time work, while you  
10 were working on your Ph.D., which continued  
11 while you were an abstractor for 3i from  
12 from 1965 to 1966? Did any of that work,  
13 was any of it related to 3i doing work for  
14 part of the tobacco industry?

15 A Yes.

16 Q Was all of that part-time work involved in  
17 doing work for a segment of the tobacco  
18 industry?

19 A No.

20 Q When did you actually start doing work at 3i  
21 as a part-time worker that related to  
22 services for a segment of the tobacco  
23 industry?

24 A I don't remember.

25 Q Do you know when 3i first started doing this

ALICE A. JANETSKY, CSR, RPR

689315748

51

1 work for the tobacco industry as to what year  
2 they started doing it? I am talking about  
3 the selection, abstracting and indexing of  
4 bio-medical literature are published  
5 literature?

6 A Are you talking about the contract with  
7 Covington and Burling.

8 Q Not necessarily. When did they start doing  
9 work for the tobacco industry?

10 A Well, that's what I am trying to address.  
11 The work that they did was for the attorneys  
12 who represented the tobacco industry. I just  
13 wanted to say that.

14 Q When did you start doing the work that you  
15 were doing, the work as a part-time employee  
16 and also working as an abstractor? Do you  
17 know when it was that you first began that  
18 work for 3i?

19 A No.

20 Q You don't know whether it had been going on  
21 for several years or not?

22 A I wouldn't say that.

23 Q Well, I was trying to get some way of  
24 pinpointing the date when 3i first started  
25 doing some work for Covington & Burling.

ALICE A. JANETSKY, CSR, RPR

689315749

52

1 A I think I understand what you are trying to  
2 pinpoint. But I just can't recall these  
3 dates from twenty years ago. I don't  
4 recall.

5 Q 3i may have been doing this before you  
6 started doing part-time work on it; might  
7 they not?

8 A I don't know what they were doing before I  
9 was approached with it, because I recall  
10 attending a meeting with some of these  
11 lawyers in a start-up session. I don't  
12 believe that the project could have gone on  
13 very long before I got there.

14 Q This was the start-up of the project at 3i?

15 A Yes.

16 Q Do you know when 3i, how long they had been  
17 doing this at that time?

18 A I'm not certain, perhaps a few years.

19 Q Do you know if 3i had done work under a  
20 different type of contract for Covington and  
21 Burling, selecting materials according to  
22 the criteria furnished you for abstracting  
23 and indexing and storage? How far back do  
24 you go in terms of dates as far as selecting  
25 literature.

ALICE A. JANETSKY, CSR, RPR.

689315750

53

1 A It's my recollection that I think 1963 was  
2 more or less the beginning date. In terms of  
3 the published literature. But I do know  
4 there were some documents in this data base  
5 that are earlier than that, data that were  
6 published earlier than that date.

7 Q What means were taken to select those.

8 A We went into the libraries and used the  
9 manual indexes, since that was the only way  
10 of retrieving the information in those days.  
11 There was no automated systems,  
12 perhaps with the exception of the beginning  
13 project at MEDLARS, the government library.  
14 In addition, I recalled that the litigating  
15 lawyers themselves sent both copies of  
16 articles that they had in their own  
17 particular files as well as references to  
18 other articles. We went out and obtained  
19 those articles.

20 Q Did this take place while you were at 3i or  
21 the Literature Retrieval Division or both?

22 A I think this was limited to when I was at 3i.  
23 I can add this to perhaps clarify that.  
24 If a litigating lawyer told me that they had  
25 a collection of articles that they wanted

ALICE A. JANETSKY, CSR, RPR

689315751

54

1 us to put through the selection criteria  
2 or the bibliography of articles, that we  
3 would get the them and pass them by the  
4 selection criteria to see if they would be  
5 selected.

6 Q Did the Tobacco Institute ever furnish any  
7 such materials?

8 A Not to my knowledge.

9 Q What about the Surgeon General's reports over  
10 the years? Did either 3i or the Literature  
11 Retrieval Division ever collect and abstract  
12 and index them?

13 A Sir?

14 Q The Surgeon General's reports?

15 MR. RUSKIN: Bill, that is now  
16 getting into what he did while he  
17 was at these companies pursuant to  
18 the the lawyers' directions. And  
19 we object to that on the grounds of  
20 work product, and instruct him not  
21 to answer.

22 MR. KIRK: Can we take a five  
23 minute break, Judge? We have been  
24 going about 45 minutes.

25 THE MASTER: Yes. Real short.

ALICE A. JANETSKY, CSR, RPR

689315752

(Recess)

THE MASTER: Ready when you  
are counselor.

Q Okay. Dr. Giller, earlier you discussed the  
secondary publications that people at the  
Literature Retrieval Division reviewed to see  
if it fit any of the criteria. I believe you  
have also testified that in addition to  
getting the secondary publications, that you  
had secondary sources of publications. And I  
want to know if these secondary sources  
applied the criteria?

A The secondary source that we used that I can  
recall never received the criteria, as I have  
already testified.

Q How did they know what to look for?

A The service that I am describing is a  
computer alerting service.

Q What was the name of that?

A The name of the company is the Institute for  
Scientific Information.

Q Okay. And what exactly did they do for you?

A The Institute for Scientific Information  
would search it's data base, on a regular  
basis, perhaps semi-monthly. And their data

ALICE A. JANETSKY, CSR, RPR

629315753



56

1 base was and is to my knowledge a by-product  
2 of their particular publications that they  
3 sell to the public.

4 Q And as they developed these publications they  
5 used the computer. And they had in their  
6 computer as a result, the titles of all of  
7 the articles and the authors of all of the  
8 articles that they included in their  
9 publications. The Institute for Scientific  
10 Information then marketed what they called an  
11 alerting service, which was simply a search  
12 of their data base, based on title words.

13 A So if an article that they happened to  
14 publish in one of their journals that they  
15 sold had as a title, "The Effect Of Alpha  
16 Antitrypsin on Lung Epithelium," for example,  
17 one could search all of those words in the  
18 title.

19 Q Who would give them the title words to check?

20 A I would.

21 Q And when you would give them the title words  
22 to check, was this in a contract that you had  
23 with them, or a letter, or how did you  
24 communicate this information to them of the  
25 title words to check?

ALICE A. JANETSKY, CSR, RPR

689315754

57

1 A There was a purchase order. They were a  
2 vendor and we would specify in either a  
3 letter or the purchase order what specific  
4 title words or portions of the title words  
5 that we wanted searched.

6 Q What years was this service utilized by you?

7 A I don't remember.

8 Q Was it utilized by you while you were at 3i?

9 A No.

10 Q Was it utilized by you while you were at the  
11 Literature Retrieval Division?

12 A Yes.

13 Q Okay, what years while you were at the  
14 Literature Retrieval Division?

15 A I don't remember.

16 Q You don't remember any of them?

17 A I don't know when this service began. And so  
18 I can't recall when we started to use it.

19 Q Are you using it at LS, Inc.

20 A Yes.

21 Q Could you estimate how many years you used it  
22 at the Literature Retrieval Division of/at  
23 CTR?

24 A I would try to estimate by just saying, a few  
25 years while at LRD.

ALICE A. JANETSKY, CSR, RPR

689315755

58

1 Q If you wanted to find out, you could refer to  
2 these purchase orders?

3 A Yes.

4 Q When we talked about these title words or  
5 portion of the title words, are we talking  
6 about, oh, just a half a dozen or so? Or are  
7 we talking about literally scores of the  
8 title words or portions of the title words?

9 A I think there were about twenty.

10 Q Okay. I want you to go ahead and state what  
11 those titles were for these searches.

12 MR. RUSKIN: We will object to  
13 that on the grounds of work  
14 product.

15 MR. TOWNSLEY: I think we need  
16 to vacate and let him answer this  
17 one.

18 (At this time plaintiffs'  
19 counsel withdrew from the  
20 room, and the Witness' answer was  
21 heard In Camera before the  
22 Master with counsel for the witness  
23 and defense counsel in attendance.)

24 ---oOo---

25 (Plaintiffs' counsel having

ALICE A. JANETSKY, CSR, RPR

629315756

59

1 returned to the deposition room,  
2 the following proceedings were had  
3 before the Master, with the  
4 Witness and all counsel present.)

5 Q Since that was done in a relatively brief  
6 time let me ask you, Dr. Giller, to describe  
7 all selection that was made by you either at  
8 3i or LRD of copies of the Surgeon General's  
9 reports, various reports on the health  
10 consequences of smoking, and what you did  
11 with those reports in respect to analysis,  
12 indexing or any other work in respect to  
13 them.

14 MR. KIRK: Objection.

15 MR. RUSKIN: Work product.

16 MR. KIRK: Also object to the  
17 form, he will attempt to answer  
18 it. It's three questions, not  
19 one.

20 (At this time, the plaintiffs'  
21 counsel withdrew from the  
22 deposition room, and the Witness'  
23 answer was heard In Camera before  
24 the Master, with counsel for the  
25 witness and defense counsel present.)

ALICE A. JANETSKY, CSR, RPR

689315757

60

---oOo---

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

(Plaintiffs' counsel having  
returned to the deposition room,  
the following proceedings were had  
before the Master, with the Witness  
and all counsel present.)

Q (By Mr. Townsley) Dr. Giller when the user  
requests were being kept at 3i from 1966 to  
1983 was the same type of record keeping  
made?

A I don't remember.

Q What type of record keeping was made then at  
3i?

A I can't recall exactly what kinds of records  
were kept. I believe what was kept was what  
was transmitted, is the answer to a given  
question, which would have been a list of  
document numbers.

Q At the Literature Retrieval Division, did you  
set up some sort of file on each user  
question?

A Yes.

Q What kind of identification indication did  
you give these user request files?

A The user requests are filed in two ways, by

ALICE A. JANETSKY, CSR, RPR

689315758

61

1           number, by increasing numbers these are the  
2           prenumbered forms and the copy also is filed  
3           by the requestor, the law firm that is.

4   Q    So that if you were told to furnish the user  
5           request records for 1974, you would know how  
6           to obtain them?

7   A    I would know how to obtain them. However, if  
8           I were asked that question I could not obtain  
9           those request forms from 1974.

10   Q    Why is that?

11   A    Because we don't keep them that long.

12   Q    Okay. What's happened to those user request  
13           forms, the user requests made in 1974?

14   A    They were weeded out.

15   Q    What was the policy as far as weeding out  
16           these user request forms?

17   A    We keep most of those materials five years,  
18           plus the current year. So our records would  
19           go back to 1981.

20   Q    Okay. When would you have done away with the  
21           1980 user requests?

22   A    When that no longer qualified for five years  
23           plus currents.

24   Q    What would you have done with it?

25   A    Destroyed them.

ALICE A. JANETSKY, CSR, RPR

689315759

62

1 Q How did you go about destroying them?

2 A Shredded them.

3 Q So then the past year you have shred at least  
4 one year of user requests?

5 A Yes.

6 Q No one has suggested to you that perhaps  
7 these should be preserved for the time being  
8 and that none should be destroyed?

9 A Yes, my counsel advised me to discontinue any  
10 routine destruction.

11 Q When did you get that advice?

12 A It would have been earlier this year.

13 Q During the testimony I have heard reference  
14 made by you as to the document called the  
15 guidelines. Then I have heard reference made  
16 to a document containing the indexes, and  
17 then we have made reference to the criteria  
18 furnished for selecting materials. Would you  
19 describe for me the actual documents that you  
20 had at the Literature Retrieval Division that  
21 covered those three, the guidelines, the  
22 indexes, the information, the criteria. And  
23 I don't know whether we are talking about the  
24 same thing or not. So would you go ahead  
25 and describe it?

ALICE A. JANETSKY, CSR, RPR

689315760

63

1 A There are separate documents for these  
2 purposes. There is a separate document that  
3 is a document that provides selection  
4 criteria.

5 Q Is that what you call it a selection criteria  
6 document?

7 MR. RUSKIN: It's got another  
8 name.

9 Q What is the name you give it, so we will know  
10 what we are talking about?

11 A That document is called the SCOPE OF  
12 COVERAGE.

13 Q Okay. That's one document, the Scope of  
14 Coverage. And is that what you refer to as  
15 the document containing the criteria for -- ?

16 A Selecting.

17 Q Selecting the published materials?

18 A Yes.

19 Q What is the other document?

20 A I am going to try for the exact title of  
21 these documents, but I can't say I am 100  
22 percent accurate. There is a document and  
23 settlements called something like GUIDELINES  
24 FOR ABSTRACTING AND INDEXING.

25 There is a third, to answer your

ALICE A. JANETSKY, CSR, RPR

689315761



64

1 question, a third area which dealt with  
2 indexes. There are INDEXES OF TERMS that are  
3 used to store and retrieve the articles with.

4 Q Is this a bound document?

5 A The indexes are.

6 Q Are they separate documents?

7 A The indexes are separated from the other  
8 documents.

9 Q I mean, are all the indexes though, are they  
10 combined together into one document or one  
11 binder, the index of the terms used to store  
12 and retrieve?

13 A I believe there are two volumes of index  
14 terms that deal with topical concepts. There  
15 are others that involve index terms that deal  
16 with bibliographic contents.

17 Q How many volumes would that be?

18 A I think that would be three volumes.

19 Q Okay, are there any more?

20 A Not that I recall.

21 THE MASTER: May I interrupt  
22 just a second at this point.

23 Dr. Giller, a large part of  
24 your work had to do with analysis.  
25 Are you saying there isn't any

ALICE A. JANETSKY, CSR, RPR

689315762

65

1 document that relates to how you  
2 perform one of your analyses?

3 A The analyses are covered in this document  
4 that I believe is called GUIDELINES FOR  
5 ABSTRACTING AND INDEXING and its  
6 supplements.

7 THE MASTER: Thank you, sir.

8 Q It has supplements, you say?

9 A Yes.

10 Q This SCOPE OF COVERAGE you mentioned first  
11 as being a document, is this a one volume  
12 work, or what is the configuration of that  
13 document?

14 A I think we described it last week as a  
15 booklet of about twenty-five or thirty pages.

16 Q Did such a document exist when you were at  
17 3i?

18 A Yes.

19 Q Did it exist when you were at the Literature  
20 Retrieval Division

21 A Yes.

22 Q And it exists while you are now at LS, Inc.

23 A Yes.

24 A I should add that this document has changed  
25 over the years as the lawyers saw fit to

ALICE A. JANETSKY, CSR, RPR

689315763

66

1 change it. So I don't want to give you the  
2 impression that the current edition of the  
3 SCOPE OF COVERAGE is the same SCOPE OF  
4 COVERAGE as it was at any time in the past.

5 Q Do you retain in your files all of the  
6 superseded portions of it?

7 A I believe one of the attorneys has copies of  
8 those superseded versions. And I may have in  
9 our files some superseded versions.

10 Q And the document, GUIDELINES FOR ABSTRACTING  
11 AND INDEXING, was that document in existence  
12 at 3i?

13 A Yes.

14 Q And was it in existence when you were at the  
15 Literature Retrieval Division?

16 A Yes.

17 Q And it's in existence now at LS, Inc.?

18 A Yes.

19 Q Has it likewise changed over the years?

20 A Yes, sir.

21 A Yes.

22 Q At this time does it have one or more  
23 supplements?

24 A Yes.

25 Q How many supplements does it have?

ALICE A. JANETSKY, CSR, RPR

689315764

68

1 changed over the years also.

2 Q I will ask you this question, Dr. Giller: We  
3 have spent sometime in having you identify  
4 the users of this material at 3i and the  
5 Literature Retrieval Division. Now I want  
6 to ask you if any company representatives,  
7 tobacco company representatives of any of  
8 the Big Six whether it's counsel, or  
9 president, janitor, or anybody, did you ever  
10 supply any materials to these company  
11 representatives or any company  
12 representatives?

13 A At 3i? We didn't know to whom we were  
14 supplying analyses or search results, since  
15 all of the questions came through a common  
16 source and then were relayed to us. And 3i  
17 would respond to the question by searching  
18 the computer and doing whatever analysis it  
19 does for that question, and then report back  
20 a list of document numbers to the individual  
21 who made the request. That individual then  
22 did something else with it. And I don't  
23 know what was done with it after that point.

24 Q Would this individual be on, be a member of  
25 the lawyers' committee?

ALICE A. JANETSKY, CSR, RPR

689315765

69

1     A     This individual was Simon O'Shea, who was  
2           then the central requestor. And I don't know  
3           whether Simon O'Shea was affiliated with the  
4           Council for Tobacco Research during any of  
5           those years.

6     Q     I think you showed me a document last week  
7           that showed he had a title, something to do  
8           with the Council, and was at some meeting.  
9           But I had never seen that document until that  
10          time.

11    A     I had no knowledge of any affiliations that  
12          he might have had other than the Covington  
13          and Burling.

14    Q     At the time the Literature Retrieval  
15          operations were transferred from 3i to the  
16          Literature Retrieval Division of/at at CTR,  
17          do you have any, just a general idea about  
18          how many requests you were receiving a month  
19          from users? Is it something that came in  
20          every week or -- ?

21    A     I am afraid I don't have any recollection of  
22          that at all.

23    Q     Did you compile some statistics from time to  
24          time showing how many user requests had been  
25          made?

ALICE A. JANETSKY, CSR, RPR

689315766

70

1 A I did not.

2 Q Did 3i bill out based on the user requests  
3 made?

4 A Not to my recollection.

5 Q When you left the Literature Retrieval  
6 Division in '83, during the previous year  
7 would you have had hundreds of user requests?

8 A Yes.

9 Q Dr. Giller, while you were at the Literature  
10 Retrieval Division from 1971 to 1983,  
11 describe any materials that you collected or  
12 abstracted or indexed that pertained to  
13 cigarette advertising?

14 MR. RUSKIN Objectionable on  
15 the grounds of work product.

16 (At this time, plaintiffs'  
17 counsel withdrew from the  
18 deposition room, and the  
19 Witness' answer was heard In  
20 In Camera before the Master, with  
21 counsel for the witness and  
22 defense counsel in attendance.)

23 ---o0o---

24

25 (Lunch Recess)

ALICE A. JANETSKY, CSR, RPR

629315767

71

AFTERNOON SESSION

July 9, 1986

(Plaintiff's counsel having returned to the deposition room, the following proceedings were had, before the Master, with the Witness and all counsel present.)

MR. RUSKIN: Prior to the luncheon recess, there was reference made in the record to three documents that will be marked as In Camera Exhibits A, B, and C.

(In Camera Exhibits A, B, and C were marked Camera Ex. A, Camera Ex. B, Camera Ex. C. for identification by the reporter, and copies were attached to In Camera Deposition of Frederick B. Giller, Volume 2 only.)

MR. RUSKIN: And I would like to describe for the record in Mr. Townsley's presence, pursuant to

ALICE A. JANETSKY, CSR, RPR

689315768

72

1 his request, a description of what  
2 each of these documents,  
3 Camera Ex. A, Camera Ex. B, and  
4 Camera Ex. C, is.

5 Camera Ex. A is the SCOPE OF  
6 COVERAGE that existed as of  
7 Setember 12, 1980.

8 Camera Ex. B consists of an  
9 actual article, which was selected  
10 by LRD for inclusion within its  
11 system. It includes an abstract  
12 that was prepared of that article.  
13 And it includes a description of  
14 the index terms that were utilized  
15 in order to put that -- put those  
16 index terms within the computer  
17 system for retrieval purposes.

18 The third document  
19 (Camera Ex. C) consists of again,  
20 an actual copy of a user request  
21 that was utilized in March of 1982.  
22 And it's an actual user request  
23 that was taken from the files of  
24 LRD, and it shows in addition the  
25 nature of the request of the user.

ALICE A. JANETSKY, CSR, RPR

689315769



73

1 It shows the response that was  
2 made by LRD to that request,  
3 subsequent to the time it was made.

4 And as to each of these  
5 documents, we would ask the  
6 witness to describe the documents  
7 and to explain them for the  
8 benefit of the Special Master, in  
9 order that he understands what  
10 each of the Documents is, and the  
11 manner in which it was used.

12 MR. KIRK: Just one thing  
13 further. In making this offer of  
14 proof In Camera, none of the  
15 defendants, nor the witness, nor  
16 LS, Inc. or LRD, for that matter  
17 is waiving any objection they may  
18 have to the production of these  
19 documents, nor to the assertion of  
20 privilege related to these  
21 documents as to the work product,  
22 attorney-client -- as well as any  
23 other privileges which may be  
24 applicable.

25 That should be made clear.

ALICE A. JANETSKY, CSR, RPR

689315770

74

1 And you and I have expressed to  
2 the master previously in the In  
3 Camera record that these documents  
4 will not be disclosed to the  
5 plaintiffs' under any  
6 circumstances until all appellate  
7 remedies are exhausted, should the  
8 Court rule these are in any way  
9 discoverable.

10 MR. TOWNSLEY: For the  
11 plaintiffs, of course we cannot  
12 give our approval to any procedure  
13 whereby the defendants are allowed  
14 to put on evidence to support  
15 their position when we are not  
16 apprised of that evidence, which  
17 includes both the exhibits and the  
18 testimony.

19 Particularly, we have  
20 misgivings about the procedure  
21 whereby testimony is put on in our  
22 absence to it. Likewise, we are  
23 not waiving any objections that we  
24 may have to it.

25 We specifically have

ALICE A. JANETSKY, CSR, RPR

689315771

75

1 reservations about selecting  
2 materials dated in the '80's, when  
3 it might be more appropriate to  
4 select the materials dated in the  
5 early '70's. We do not like a  
6 procedure where the defendants  
7 have arbitrarily selected what  
8 they may characterize as typical  
9 user requests. If this were  
10 to be done, it should be done in  
11 a supervised random manner that  
12 would contain sufficient samples  
13 that there would be a high degree  
14 of reliability that you are  
15 getting representative information  
16 that was collected, prepared, and  
17 utilized by the Literature  
18 Retrieval Division of CTR.

19 We understand that in our  
20 absence, under the procedure that  
21 the Master is following, that the  
22 witness will be asked to explain  
23 and describe these three  
24 documents. We do not know whether  
25 there's going to be just one

ALICE A. JANETSKY, CSR, RPR

689315772

76

1 question, and that is going to be  
2 it in respect to each of the  
3 documents, or not. And I would  
4 like some clarification on it.

5 I would like for the  
6 defendants to agree to present  
7 some articles and some user  
8 request materials and documents  
9 for the Master's examination,  
10 where they are obtained in a  
11 manner that we select, rather than  
12 in a manner that the defendants  
13 have selected. We have had what  
14 purports to be representative  
15 documents presented to us before;  
16 then after getting the underlying  
17 material, find it's very  
18 unrepresentative.

19 So we all have these caveats  
20 and misgivings. So without  
21 further discussion, I suppose we  
22 will retire, and you can proceed.

23 (At this time, plaintiffs'  
24 counsel withdrew from the  
25 deposition room, and the Witness'

ALICE A. JANETSKY, CSR, RPR.

689315773

77

1 answer was heard In Camera before  
2 The Master, with counsel for the  
3 Witness' and defense counsel in  
4 attendance.)

5 ---o0o---

6 (The plaintiffs' counsel  
7 having returned to the deposition  
8 room, the following proceedings  
9 were had before the Master, with  
10 the Witness and all counsel  
11 present.)

12 MR TOWNSLEY: I guess, Your  
13 Honor, the record should show that  
14 plaintiffs' counsel have now  
15 returned to the room at this point  
16 to resume questioning of Dr.  
17 Giller.

18 Q Dr. Giller, you have been discussing some  
19 three exhibits here, while we have been out  
20 of the the room.

21 A Yes.

22 Q This SCOPE OF COVERAGE of September 12, 1980,  
23 is that the document that you are currently  
24 using at LS, Inc.

25 A No.

ALICE A. JANETSKY, CSR, RPR

689315774

78

1 Q Was September 12, 1980, was that an edition  
2 of this SCOPE OF COVERAGE?

3 A Yes.

4 Q Have there been several editions.

5 A Yes,

6 Q Would the first edition have been in about  
7 1966?

8 A Yes.

9 Q Who selected the September 12, 1980 edition?

10 A I did.

11 Q Well, did you just decide to bring it?

12 A Yes.

13 Q Did you have anybody suggest that you bring  
14 it?

15 A Not that particular edition, no?

16 Q Do you have other editions with you?

17 A No.

18 Q That's the only one you happened to bring?

19 A Yes.

20 Q If you had wanted to bring an edition from  
21 the 1960's or early seventies, you couldn't  
22 have, could you?

23 A I am not sure my records go back that far.

24 Q Why don't they go back that far?

25 A It wasn't my purpose to keep historical

ALICE A. JANETSKY, CSR, RPR

689315775

1 records on these things?

2 Q You mean there's been some of the SCOPE OF  
3 COVERAGE editions that have been destroyed?

4 A I didn't say that, no. It's just that the  
5 lawyers on the committee kept these documents.  
6 The documents that I have are aren't  
7 necessarily to be filed.

8 Q You testified earlier that this SCOPE OF  
9 COVERAGE was one of the documents that you  
10 all had and used; did you not?

11 A Yes.

12 Q Well, haven't you had an edition of it at all  
13 times?

14 A Yes.

15 Q Are you saying that you don't have all of the  
16 editions that you have had in the past?

17 A I am saying that I don't know whether I have  
18 all the past editions.

19 Q Of your own personal knowledge, have any of  
20 them been destroyed?

21 MR. KIRK: By Mr. Giller?

22 Q Or anybody else. Of his personal knowledge,  
23 have any of these editions of the SCOPE OF  
24 COVERAGE been destroyed?

25 A I believe multiple copies of a particular

ALICE A. JANETSKY, CSR, RPR

689315776

80

1 issue would have been destroyed to avoid  
2 confusion as to which was the more current  
3 one, but the particular editions that I  
4 have, as I said may not be the complete file.  
5 I don't believe they are. My understanding  
6 is that one or more of the lawyers on the  
7 committee at that time has a complete file.

8 Q Well, if the Master wanted to look at the  
9 edition for back in the late sixties or early  
10 seventies a copy could be obtained, couldn't  
11 it?

12 A Well, I could look in that file and see if I  
13 had a copy. If I didn't I couldn't provide  
14 it.

15 Q The lawyers could provide it if they chose  
16 to?

17 A If they chose to, they could provide it.

18 Q Then you have furnished this article  
19 and abstract as Camera EX. B. What was the  
20 date of it; when was it was it abstracted?

21 A In 1981.

22 Q Well, you have been abstracting since 1966,  
23 haven't you?

24 A Yes.

25 Q And you have all have these articles and

ALICE A. JANETSKY, CSR, RPR

689315777



81

1           abstracts on microfilm, don't you?

2       A    Yes.

3       Q    If the Master wanted to look at the first  
4           five articles that were abstracted in June of  
5           1966, you could furnish them couldn't, you?

6       A    In June of 1966?

7       Q    Yes, from the 3i material.

8       A    I don't believe I could furnish those in the  
9           fashion that you are describing, no.

10      Q    You couldn't determine what articles were  
11           abstracted in June of 1966 at 3i?

12      A    Not very easily, no.

13      Q    How would you go about doing it, if you were  
14           to set out to do it?

15                   THE MASTER: Off the record.

16                   (There was a recess,  
17                   beginning when the Witness and all  
18                   counsel were in attendance, and  
19                   ending with the Witness and all  
20                   counsel returning to the room.)

21      A    What I was going to say is that these  
22           articles are not arranged by a chronology on  
23           the shelf. They are arranged by the numbers.  
24           And whereas there might be some crude  
25           relationship between the chronology of the

ALICE A. JANETSKY, CSR, RPR

689315778

82

1           number and the time that it was selected and  
2           then analyzed, that is not the way the file  
3           was arranged. So it would be just kind of a  
4           question as to what article was done on what  
5           day of what month. But it would be difficult  
6           to come up with.

7   Q   Well, I suggest there might be an alternative  
8           way that if you furnished the numbers  
9           assigned to the articles abstracted in June  
10          of 1966, and then randomly five of those were  
11          selected, you can produce them, can you not?

12   A   I was distracted. Repeat that.

13   Q   Could you furnish the numbers assigned to the  
14          articles that were abstracted in June of  
15          1966?

16   A   I don't think so.

17   Q   You mean you don't assign a date to it? When  
18          an article is abstracted, you don't assign a  
19          date that's in the computer and retrievable?

20   A   I would have to look through a hundred  
21          thousand documents to try to figure out what  
22          that would be.

23   Q   You could furnish just arbitrarily for the  
24          middle of 1966, you could furnish the range  
25          of numbers of the material that was put in,

ALICE A. JANETSKY, CSR, RPR

689315779

83

1 count just roughly whether it went from  
2 numbers maybe with five digits that would  
3 just go on up there. I am trying to figure  
4 out a convenient way of someone taking a  
5 random sample in 1966 of the articles that  
6 were selected and abstracted. How would you  
7 go about doing it if you were--if you wanted  
8 to furnish the numbers from which a random  
9 sample could be taken?

10 A If I wanted to get a random sample, I could  
11 have anything, I would start with the first  
12 document and the last document. Let's assume  
13 that's from 1 to 135,000. And I would go to  
14 something called a table of random numbers,  
15 which is generally an appendix in the back  
16 of most mathematics books, and use the table  
17 of random numbers to identify which documents  
18 would be selected randomly. When you follow  
19 such a table in fact you have a high  
20 percentage of likelihood of having a random  
21 sample.

22 Q Could you furnish the numbers that were  
23 assigned, the beginning and ending numbers  
24 of everything that was prepared at 3i?

25 A I could get the first number which would have

ALICE A. JANETSKY, CSR, RPR

689315780

84

1           been the number 1, of course. And I'm not  
2           sure, but I probably could come close to the  
3           number that was the last one that was done  
4           by 3i. I'm not certain of that.

5                   MR. TOWNSLEY: Okay. So that  
6                   would furnish some basis so that  
7                   if plaintiffs want, a request  
8                   could be made of the Master to  
9                   have produced some random samples  
10                  with which to compare this 1982  
11                  article and abstract that was  
12                  furnished. I would say that we  
13                  may suggest this to the Master.  
14                  Of course, it would be up to the  
15                  defendants as to whether or not  
16                  they wanted to produce it. In  
17                  the absence of that, we would ask  
18                  these documents and the testimony  
19                  related to it be stricken.

20       A    Mr. Counsel, may I add that for sometime last  
21           week you were in my view, focusing in on the  
22           activities of the Literature Retrieval  
23           Division. And it was my intention, with  
24           regard to these exhibits, to show to the  
25           Master things that had occurred and an

ALICE A. JANETSKY, CSR, RPR

689315781

85

1 article that had been processed, and user  
2 request form involving that article from  
3 that time period as a way of demonstrating  
4 the mechanics of how this thing worked at  
5 LRD.

6 Q Well, the problem with that in an adversary  
7 system is that you are making the selection  
8 rather than the Plaintiffs. I am sure if I  
9 could have access, I would have selected  
10 something different.

11 MR. KIRK: If you had had  
12 access to the material, we  
13 wouldn't be here?

14 MR HANKS: I would probably  
15 need a fifteen year leave of  
16 absence.

17 Q Who was the user that requested Camera EX. C?

18 A The request that was made?

19 Q Yes.

20 A It was Mr. Decker, Francis K. Decker.

21 Q Was this in connection with pending  
22 litigation?

23 MR. KIRK: Objection. I will  
24 instruct the witness not to answer  
25 that question on the grounds it

ALICE A. JANETSKY, CSR, RPR

689315782

86

1 has to do with work product.

2 Q In 1975, was there any pending litigation on  
3 product liability cases against the Big Six  
4 cigarette manufacturers?

5 MR. RUSKIN 1975?

6 Q Yes.

7 A I don't know.

8 Q Were there any pending cases in 1982?

9 A I don't remember.

10 Q 1983?

11 A I don't remember.

12 Q You just just haven't committed it to memory  
13 as to when some cases were pending to your  
14 knowledge?

15 A It's more than that. I just never got  
16 involved with whether or not there were cases  
17 pending. I never gave that very much  
18 thought. That was not my charge.

19 Q Would it surprise you to know that in 1982,  
20 that during the greater majority of those  
21 years, there weren't any as to each  
22 defendant, and if there were not, why would  
23 there be any pending requests?

24 MR. RUSKIN Object to the  
25 form of the question as assuming

ALICE A. JANETSKY, CSR, RPR

689315783

87

1 facts he hasn't established to my  
2 knowledge, and unfair to confront  
3 the witness with that question.

4 MR. KIRK: Argumentative, not  
5 asking for a fact. The man has  
6 already testified it's not his job  
7 to keep up with when the cases  
8 were pending. And even if  
9 cases are pending, that is asking  
10 him to speculate. It is  
11 argumentative. And I object to  
12 the form.

13 Q Dr. Giller, I know you are being asked not to  
14 answer questions because of the work product  
15 privilege which is in connection with  
16 litigation. Have you been advised as to the  
17 particulars of what litigation was going or  
18 not during these years?

19 MR. KIRK: By the lawyers?

20 A From time to time a lawyer might have  
21 mentioned some litigation.

22 Q What kinds of litigation?

23 A Tobacco and health litigation.

24 Q Anyone of them mention anything to you about  
25 that before 1982?

ALICE A. JANETSKY, CSR, RPR

689315784

88

1 MR. KIRK: You are getting  
2 into what the lawyers were telling  
3 him about the use of this material  
4 and what they needed it for.

5 MR TOWNSLEY: Not at all.

6 MR. RUSKIN: You are asking  
7 about communications between  
8 himself and his employers, the  
9 lawyers.

10 MR. TOWNSLEY: He has come in  
11 here with supposedly some  
12 representative examples to explain  
13 how things work. I am trying to  
14 show that this is not  
15 representative, at all, as far as  
16 being in connection with pending  
17 litigation. So that if he wants  
18 to testify that the materials were  
19 furnished for that purpose, I need  
20 to know what his knowledge is as  
21 it relates to this subject.

22 MR. RUSKIN: If he has  
23 knowledge not based on the  
24 communications from his employers,  
25 the attorneys.

ALICE A. JANETSKY, CSR, RPR

689315785



89

1 MR. TOWNSLEY: The mere fact  
2 that it was made in that  
3 connection, that somebody stated  
4 it, would not be revealing of work  
5 produced, just revealing of the  
6 fact that he was informed of  
7 on-going cases.

8 MR. BISSELL: The next  
9 question is, what did they tell  
10 you about the use to which that  
11 material was going to be put.

12 MR. TOWNSLEY: Is that an  
13 objection.

14 MR. KIRK: So as not to  
15 interrupt the proceedings, we have  
16 let you go awfully far down the  
17 line in questioning about his In  
18 Camera materials, and made very  
19 few objections all day to the  
20 questions. I think you have gone  
21 well beyond letting you inquire as  
22 to information In Camera. This is  
23 now argumentative, and I would  
24 like to get back on track with  
25 factual things within this man's

ALICE A. JANETSKY, CSR, RPR

689315786

1 knowledge, where he can give you  
2 specific answers and get away from  
3 the argumentative things, and more  
4 appropriately and briefly put.

5 MR. BISSELL: The first  
6 question was objectionable.

7 Q (By Mr. Townsley) Back before these  
8 documents were furnished to the Master, In  
9 Camera, you had been asked a question  
10 pertaining to cigarette advertising. Did  
11 these documents -- in your testimony was that  
12 a follow up in respect to your answer about  
13 cigarette advertising that was made in our  
14 absence?

15 A I wouldn't call it follow up. However, I  
16 did point to a particular paragraph in one of  
17 those exhibits that shed light on your  
18 question.

19 Q Dr. Giller, I earlier asked you what I  
20 believe is the fifth question in which  
21 objections were raised and plaintiffs'  
22 counsel left the room. And it pertained to  
23 materials collected while you were at LRD  
24 which pertained to cigarette advertising.  
25 And now I will ask you Question No. 6. While

91

1 you were at 3i from 1966 to 1983, describe  
2 any materials selected, abstracted or  
3 indexed, which pertained to cigarette  
4 advertising.

5 MR. KIRK: Objection, work  
6 product under Rule 166b.

7 MR. RUSKIN: For the record,  
8 if any of the attorneys state an  
9 objection, is it understood, Mr.  
10 Townsley, that objection includes  
11 each of the objections that we  
12 have set forth the many times as  
13 work product, attorney-client, and  
14 as expert consultant?

15 MR. TOWNSLEY: That will be  
16 satisfactory. I will say from  
17 this point on and beginning this  
18 time I will accept that as the  
19 nature of the objection.

20 (At this time, plaintiffs'  
21 counsel withdrew from the  
22 deposition room, and the answers  
23 of the Witness were heard in  
24 Camera by the Master, with the  
25 Witness' attorneys and defense

ALICE A. JANETSKY, CSR, RPR

689315788

attorneys in attendance)

---o0o---

(Plaintiffs' attorneys having returned to the deposition room, the following proceedings were heard by the Master, with the Witness and all counsel present.)

Q (By Mr. Townsley) Dr. Giller, earlier you had been asked a question in which we had defined for you our definition of the smoking and health issues. And one of the issues that we discussed pertained to warnings posed by cigarette smoking. And so I am going to ask you the question now as follows: While you were at the Literature Retrieval Division of CTR from 1971 to 1983, describe any materials collected and abstracted or indexed, which pertained to warnings as to risk associated with cigarette smoking.

MR. KIRK: Objection, because of the work product.

MR. BISSELL: Objection because it is overbroad.

(At this time plaintiffs' counsel withdrew from the

ALICE A. JANETSKY, CSR, RPR

689315789

93

1 deposition room, and the Witness'  
2 answer was heard In Camera before  
3 the Master, with counsel for the  
4 witness and defense counsel in  
5 attendance.)

6 ---o0o---

7 (Plaintiffs' counsel having  
8 returned to the deposition room,  
9 the following proceedings were had  
10 before the Master, with the  
11 Witness and all counsel present.)

12 Q Dr. Giller, the previous question inquired  
13 about materials pertaining to warnings of  
14 risk associated with cigarette smoking, while  
15 you were at LRD. I would ask you to answer  
16 that same question to describe all the  
17 materials collected, abstracted or indexed  
18 that pertained to warnings of risks  
19 associated with cigarette smoking, but where  
20 the materials were collected, abstracted or  
21 indexed while you were at 3i.

22 MR. KIRK: Objection on the  
23 grounds of work product.

24 (At This time, Plaintiffs'  
25 counsel withdrew from the

ALICE A. JANETSKY, CSR, RPR

689315790

94

1 deposition room, and the Witness'  
2 answer was heard In Camers before  
3 the Master, with counsel for the  
4 witness and defense counsel in  
5 attendance.)

6 ---o0o---

7 (Plaintiff's counsel having  
8 returned to the deposition room,  
9 the following proceedings were had  
10 before the Master, with the  
11 Witness and all counsel present.)

12 Q Dr. Giller, while you were at the Literature  
13 Retrieval Division from 1971 to 1983,  
14 describe any materials that were collected,  
15 abstracted or indexed which pertained to the  
16 chemicals or constituents in cigarette smoke  
17 and in tobacco.

18 MR. KIRK: Objection.

19 Q Okay. And the follow up question will be for  
20 the same information, but instead of being  
21 while you were at 3i -- instead of while you  
22 were at LRD, it will be while you were at 3i  
23 from 1966 to 1971.

24 MR. KIRK: Objection on work  
25 product grounds, also.

ALICE A. JANETSKY, CSR, RPR 689315791

95

1 MR. TOWNSLEY: I'll be kind  
2 of getting organized for the next  
3 one.

4 MR. KIRK: All right, fine.

5 (At this time, plaintiffs'  
6 counsel withdrew from the  
7 deposition room, and the Witness'  
8 answer was heard In Camera before  
9 the Master, with counsel for the  
10 witness and defense counsel in  
11 attendance.)

12 ---o0o---

13 (Plaintiffs' counsel having  
14 returned to the deposition room,  
15 the following proceedings were had  
16 before the Master, with the  
17 Witness and all counsel present.

18 Q Dr. Giller, you had earlier told us that you  
19 received from the lawyers certain criteria  
20 that you used in selecting published  
21 materials at both 3i and the Literature  
22 Retrieval Division; is that correct?

23 A Yes.

24 Q When you say criteria, what do you mean?

25 A I mean the SCOPE OF COVERAGE.

96

1 Q Well, is it expressed in words, subjects?

2 A The SCOPE OF COVERAGE?

3 Q Yes.

4 A Yes.

5 Q And this subject matter, would it include  
6 items like -- would it include the chemicals  
7 or constituents found in cigarette smoke and  
8 tobacco?

9 MR. KIRK: Objection.

10 MR. TOWNSLEY: Let's see how  
11 [ we do on this one.

12 (At this time, plaintiffs'  
13 counsel withdrew from the  
14 deposition room and the Witness'  
15 answer was heard In Camera before  
16 the Master with counsel for the  
17 Witness and defense counsel in  
18 attendance.)

19 ---oOo---

20 (Plaintiffs' counsel having  
21 returned to the deposition room,  
22 the following proceedings were had  
23 before the Master with the Witness  
24 and all counsel in attendance.)

25 Q Dr. Giller, in selecting the material that

ALICE A. JANETSKY, CSR, RPR

689345793



97

1 was collected and abstracted, indexed and  
2 stored at both 3i and the Literature Retrieval  
3 Division of/at CTR, did you use the criteria  
4 that was contained in the document that you  
5 have described as the SCOPE OF COVERAGE?

6 A Yes.

7 Q In the September 1980 edition of this document,  
8 SCOPE OF COVERAGE, that has been offered by  
9 you here today --

10 A Yes.

11 MR. KIRK: In Camera.

12 Q In Camera, and it would contain a listing of  
13 this criteria, would it not?

14 A Yes.

15 Q And is the criteria, as far as different  
16 subject matters, approximately how many would  
17 there be?

18 A How many subject matters?

19 Q Yes.

20 MR. RUSKIN: We are going to  
21 object to that on the grounds that  
22 that material gets into the work  
23 product objections, and you are not  
24 entitled to the number of subjects  
25 covered by the selection criteria.

ALICE A. JANETSKY, CSR, RPR

689315794

98

1 Q Did you collect materials, or select and  
2 collect materials at 3i and the Literature  
3 Retrieval Division of all of the subject  
4 matters listed in this document?

5 MR. RUSKIN: Listed in what  
6 document, as of when?

7 Q SCOPE OF DISCOVERY document.

8 MR. KIRK: SCOPE OF COVERAGE.

9 Q SCOPE OF COVERAGE.

10 MR. RUSKIN: Let me understand.  
11 You are saying, did he collect  
12 articles, select and collect  
13 articles, on each and every topic  
14 that is addressed in the SCOPE OF  
15 COVERAGE?

16 MR. KIRK: That was not the  
17 question.

18 Q Yes, under each category.

19 A The answer to the question is I don't know.

20 Q As to the categories that are listed in this  
21 document, SCOPE OF COVERAGE, will you be  
22 familiar with the categories as to which a  
23 significant amount of material was collected?

24 A I don't know.

25 Q So that I would have to go through each type

ALICE A. JANETSKY, CSR, RPR

689315795

99  
1 of information I was interested in, and then  
2 ask you if it was one of the categories, and  
3 then whether or not you knew whether or not  
4 that category of information was collected?  
5 Would that apparently be the system that I  
6 would have to elicit this information from  
7 you?

8 A That, if you followed that procedure, I would  
9 not know it either.

10 Q Dr. Giller, I'm going to ask you to take in  
11 Camera Ex. A, which is the SCOPE OF COVERAGE  
12 edition of September 1980, and to go over all  
13 of the categories and state the ones to your  
14 knowledge that materials have been collected on  
15 either at 3i, or at the Literature Retrieval  
16 Division.

17 MR. RUSKIN: Objection to the  
18 question. He just said that the  
19 document changed over the years, so  
20 how can you take a document that  
21 was used in September 1980 at LRD,  
22 and ask him if he collected the  
23 the information at 3i, pursuant to  
24 a document used ten years earlier  
25 at 3i?

ALICE A. JANETSKY, CSR, RPR

689315796

100

1 MR. TOWNSLEY: That's up to  
2 him, whether he can do it or not.

3 MR. RUSKIN: Improper question.

4 MR. KIRK: Entirely overbroad  
5 and global. Bill, it would take  
6 probably from now to tomorrow  
7 morning. And in fact, he already  
8 said he couldn't do it. It is global  
9 and overbroad and argumentative, and  
10 calls upon the witness to speculate.

11 Q Let's try it another way, here. Is the health  
12 effects of sidestream smoke, secondhand smoke,  
13 or passive smoking, or any of those categories  
14 that are contained in this document, SCOPE OF  
15 COVERAGE?

16 MR. RUSKIN: Objection.

17 MR. KIRK: Same objection as  
18 always.

19 (At this time, plaintiffs'  
20 counsel withdrew from the deposition  
21 room and the Witness' answer was  
22 heard In Camera before the Master  
23 with counsel for the Witness and  
24 defense counsel in attendance.)

25 ---oOo---

ALICE A. JANETSKY, CSR, RPR

689315797

101

1 (Plaintiffs' counsel having  
2 returned to the deposition room,  
3 the following proceedings were  
4 had before the Master, with the  
5 Witness and all counsel present.)

6 Q Dr. Giller, in the document, SCOPE OF COVERAGE,  
7 which is Camera Ex. A, that you have discussed  
8 In Camera, I want you to go through it and  
9 identify all the categories that would pertain  
10 to the health effects of cigarette smoking.

11 MR. KIRK\ Work product, again.  
12 And I also, I think that what we are  
13 doing is a waste of time. What we  
14 are doing now is asking him to go  
15 through a document that is already  
16 in evidence In Camera. And now you  
17 are asking him for In Camera answers  
18 as to what the document identified  
19 In Camera, what it says. I think we  
20 are getting nowhere, but we will  
21 have an answer to the question.

22 (At this time, plaintiffs' counsel  
23 withdrew from the deposition room and  
24 the Witness' answer was heard in Camera  
25 before The Master with counsel for the

ALICE A. JANETSKY, CSR, RPR

689315798

102

1 witness and defense counsel in atten-  
2 dance.)

3 ---o0o---

4 (Plaintiffs' counsel having re-  
5 turned to the deposition room, the  
6 following proceedings were had before  
7 the Master, with the Witness and all  
8 counsel present.)

9 Q You have already testified, Dr. Giller, that  
10 the safety deposit boxes and safe contained  
11 data, but not only data, but also contained  
12 some other materials; is that correct?

13 A Yes.

14 Q Describe for me all of the materials or  
15 other data that were kept in any of these  
16 boxes or safes between 1971 and April of 1983.

17 A To the best of my recollection, the things in  
18 the boxes or safes were copies of the  
19 documentation that we had at LRD. And the  
20 documentation that I am talking about would  
21 relate to how to run LRD, in terms of the flow  
22 of materials, the instructions for librarians,  
23 the instructions for abstractors, the SCOPE  
24 OF COVERAGE, possibly. I am not certain of  
25 that.

ALICE A. JANETSKY, CSR, RPR

689315799

103

1                   As I think I have testified earlier,  
2                   of this storage site, it was to have a secure  
3                   location in the event of an emergency event, in  
4                   which these items might be destroyed, such as  
5                   in a fire or in a flood. There was nothing  
6                   there that was not already on our premises.

7       Q       Describe each one of these documents that  
8                   constitutes these other materials.

9       A       I couldn't remember the specific documents.

10      Q       Well, would the SCOPE OF COVERAGE document, a  
11               copy of that be in there?

12                   MR. KIRK: He just said he  
13                   thought it was.

14                   MR. TOWNSLEY: He just  
15                   answered that he didn't remember  
16                   any of them, too.

17      Q       What about the volumes on abstracting and  
18               indexing? Were there in there copies of those?

19      A       I don't remember.

20      Q       Well, as you described it, you had in there  
21               the documents that told you how to run LRD.  
22               And what I want you to do is to sit here and  
23               think, and describe those documents that  
24               would tell a person how to run LRD, if  
25               everything had been destroyed by fire.

ALICE A. JANETSKY, CSR, RPR

689315800

104

1 A I'll try to do that to the best of my  
2 recollection.

3 Q Okay.

4 A But, I can't remember the specific  
5 titles and documents of --

6 Q Well, do it to the best of your recollection.

7 A There were copies of manuals that were used-  
8 to operate the computer, specific instructions  
9 on how to use the computer to up-date and  
10 to search.

11 There were copies of what we call  
12 flow charts and instructions for most major  
13 steps of the operation. These consisted of  
14 written instructions and diagrams that  
15 would have been prepared by a systems analyst.

16 There were copies of something  
17 called JCL cards, which are Job Control  
18 Language Cards. These are punch cards,  
19 which are fed into a computer ready to get  
20 it to identify jobs that are to be run by  
21 the computer.

22 As I said, there may have been  
23 a copy of the SCOPE OF COVERAGE in there  
24 and certain instruction manuals that were  
25 in use at that time. I can't recall any

ALICE A. JANETSKY, CSR, RPR

689315801



105

1 more than that.

2 Q You have earlier told us at least some  
3 uses that were made of this material that  
4 was collected and abstracted, indexed,  
5 retrieved. You have told us about using it  
6 to respond to user requests by the users  
7 that you have identified for us.

8 Has this data been utilized  
9 for any other purpose, either the 3i data  
10 or the Literature Retrieval Division data?

11 A Not to my knowledge.

12 Q Then are you saying that as far as you  
13 know, none of the data has been utilized  
14 to supply information to the public?

15 A Not to my knowledge.

16 Q Is it your understanding that the only use  
17 made of this data that has been collected  
18 is in connection with pending cases  
19 involving product liability cases on the  
20 health consequences of cigarette smoking of  
21 potential litigation on that subject?

22 A I believe I answered that question last  
23 week, as to what my understanding and  
24 knowledge of what the use of this  
25 information is for.

ALICE A. JANETSKY, CSR, RPR

689315802

1 I believe I said that my  
2 understanding was that the information  
3 was used by attorneys in connection with  
4 defense of tobacco and health liability  
5 lawsuits; that I had no knowledge of what  
6 the lawyers actually used this for; and  
7 they may not have told me what they were  
8 using it for.

9 The only situation involving  
10 what you just mentioned, that I happened  
11 to have firsthand knowledge about, is the  
12 one about Mr. Ramm. Because Mr. Ramm  
13 called me personally, early on when I  
14 became administrator, probably in 1972  
15 He told me what he wanted to use this  
16 information for. What he did with it, I  
17 don't know.

18 Q What did he say he wanted to use the  
19 information for?

20 MR. KIRK: This has been  
21 asked and answered, Bill, but,  
22 if you want to, try it one more  
23 time.

24 A Okay. Mr. Ramm called me that one time,  
25 and asked me to run a search on a particular

107

1 individual that he said was being considered  
2 for a research grant from the Council for  
3 Tobacco Research.

4 Q Well, did you run it?

5 A Yes.

6 Q What was the name of the individual?

7 MR. RUSKIN: Objection. You  
8 are asking now what was in the  
9 system.

10 MR. TOWNSLEY: I am asking  
11 him for the name or the identity  
12 of the person that he ran the  
13 reasearch on.

14 NR, RYSJUB: I understand.  
15 And that would identify what was  
16 in the system. And we will  
17 object to it.

18 MR. TOWNSLEY: We will go  
19 out of the room so he can answer  
20 it then.

21 (At this time plaintiffs'  
22 counsel withdrew from the  
23 deposition room and the Witness'  
24 answer was heard In Camera before  
25 The Master with counsel for the

ALICE A. JANETSKY, CSR, RPR

689315804

108

1                   Witness and defense counsel in  
2                   attendance.)

3                   ---o0o---

4                   (Plaintiffs' counsel having  
5                   returned to the deposition room,  
6                   the following proceedings were  
7                   had before the Master, with the  
8                   Witness and all counsel present.)

9                   MR. RUSKIN: With respect to  
10                  that response, I will disclose to  
11                  Mr. Townsley that the answer to  
12                  that question was, "I don't know."

13                  MR. KIRK: In other words,  
14                  he is withdrawing his objection,  
15                  right?

16                  MR. RUSKIN: That's right.

17       Q       Then you don't know the name of the person  
18                  that Mr. Ramm wanted you to do the research  
19                  on?

20       A       I don't remember the name. It was fourteen  
21                  years ago.

22       Q       Are the records that were created in respect  
23                  to that use, or request, are they still in  
24                  existence?

25       A       I doubt that any record is still in existence

ALICE A. JANETSKY, CSR, RPR

689315805

109

1 from 1972.

2 Q Did Mr. Ramm ever make any other requests to  
3 you?

4 A Not that I recall.

5 Q Well, now was Mr. Ramm an authorized user?

6 MR. KIRK: At the time he  
7 made the request?

8 Q Yes.

9 A I don't remember.

10 Q But, he was Mr. Ramm, wasn't he?

11 MR. KIRK: Objection to the  
12 form of the question. I will  
13 concede -- we will stipulate it.

14 Mr. Ramm was Mr. Ramm.

15 Q Mr. Ramm, he was with R. J. Reynolds?

16 A My understanding was that he had been  
17 employed by R. J. Reynolds.

18 Q And the chairman of the board of directors  
19 of CTR; wasn't he?

20 A Not simultaneously.

21 Q At the time this request was made to you  
22 he was, though?

23 Y Yes, he was.

24 Q Did you ever do any, have any requests as to  
25 any other prospective research grantees of

ALICE A. JANETSKY, CSR, RPR

689315806

110

1 CTR?

2 A No.

3 Q Okay. You have told us that one other use  
4 was made of reequets from users that didn't  
5 pertain to product liability litigation on  
6 the health effects of tobacco use. Do you  
7 know of any other uses that were ever made  
8 of this data, either the 3i data, or the  
9 Literature Retrieval data?

10 A No, I don't.

11 Q Who notified you that the Tobacco Institute  
12 was to be an authorized user of the 3i  
13 data?

14 MR. RUSKIN: Did he say  
15 they were a user of 3i data?

16 Q Well, I would ask you, were they a user  
17 of 3i data?

18 A I don't remember.

19 Q But you do know they were a user of the  
20 Literature Retrieval data?

21 A Yes.

22 Q And that included the 3i data?

23 A It would have included everything that  
24 was then in the data base, yes.

25 Q Okay, again, you have stated that

ALICE A. JANETSKY, CSR, RPR

689315807

111

1 the Tobacco Institute was an  
2 authorized user of the Literature  
3 Retrieval Division. Who told you that  
4 the Tobacco Institute was an authorized  
5 user of it?

6 A To the best of my recollection, when  
7 I became administrator of LRD, the  
8 Tobacco Institute already was defined  
9 as a user.

10 Q At some point, they ceased to be a  
11 user?

12 A Yes.

13 Q Was that while you were still at the  
14 Literature Retrieval Division, or  
15 after you left?

16 A I can't remember.

17 MR. KIRK: Judge --  
18 excuse me, Bill -- we have had  
19 a long day. And the witness  
20 is getting tired. How much  
21 longer are we going to go today?

22 THE COURT: We have  
23 mentioned 4:30. Off the record.

24 (The was a conference off  
25 the record.)

ALICE A. JANETSKY, CSR, RPR

689315808

112

1 THE COURT: Back on the  
2 record.

3 A With regard to the question as to when the  
4 Tobacco Institute ceased to be a user, I  
5 said that I didn't remember. But I should  
6 have added that the Tobacco Institute never  
7 was a user after LS, Inc. was formed, in  
8 case that wasn't clear.

9 Q Who would have made the decision to terminate  
10 the Tobacco Institute as a user, as an  
11 authorized user?

12 A That would have been made by the committee  
13 of lawyers.

14 Q And they communicated that information  
15 to you?

16 A Yes.

17 Q Earlier in your testimony, you told me  
18 you were utilizing a data bank service  
19 called Bibliographic Retrieval Service.  
20 Where is the physical location of that  
21 computer?

22 A I believe it's in Latham, New York.

23 Q Is that where the company is based, in  
24 Latham, New York?

25 A That's my understanding?

ALICE A. JANETSKY, CSR, RPR

689315809



113

1 MR. TOWNSLEY: Let's mark  
2 that for identification.

3 (Deposition Ex. No. 49 was  
4 was so marked for identification  
5 by the reporter, and a copy is  
6 attached hereto.)

7 Q Dr. Giller, I would like for you to look at  
8 what has been marked for identification as  
9 Ex. No. 49 to your deposition, and then tell  
10 us what it is.

11 A This is my affidavit, sworn on May 30, 1986.

12 Q After furnishing this affidavit, you  
13 thereafter furnished a longer and more  
14 detailed affidavit; did you not?

15 A Yes.

16 Q I would direct your attention to Paragraph 3  
17 of the affidavit. And it has a sentence  
18 there:

19 "I am not under the control of any  
20 party to this litigation."

21 You understand that the six  
22 shareholders of LS, Inc., are parties to this  
23 litigation: Do you not?

24 And you add another sentence:

25 "To the best of my knowledge and

ALICE A. JANETSKY, CSR, RPR

689315810

114

1 belief, no employee of a cigarette manufacturer  
2 has ever been an officer, director, agent or  
3 employee of LS, Inc."

4 You don't think that the appointed  
5 directors of LS, Inc. are agents for cigarette  
6 manufacturers?

7 MR. KIRK: In a legal sense,  
8 Bill?

9 MR. TOWNSLEY: Well, I was  
10 trying to just clarify this  
11 affidavit.

12 MR. KIRK: In his understanding  
13 as a layman, you would like to know  
14 whether these directors of the  
15 tobacco companies --

16 Q Yes.

17 MR. KIRK: Objection on the  
18 grounds it asks for a legal  
19 conclusion.

20 MR. TOWNSLEY: It's his  
21 affidavit, not mine.

22 MR. RUSKIN: I understand,  
23 but now you are asking whether  
24 or not -- but, go ahead. Are  
25 they agents? It says, "no

ALICE A. JANETSKY, CSR, RPR

689315811

115

1 employee of a cigarette  
2 manufacturer has ever been an  
3 officer, director, agent or  
4 employee of LS, Inc."

5 Q Dr. Giller --

6 THE MASTER: Can I interject  
7 here a moment, because I don't  
8 really understand this change  
9 from: "LSI is totally controlled  
10 by the six people who are selected  
11 by the Big Six Tobacco companies--"  
12 There's something wrong with this  
13 sentence. They must be officers or  
14 directors of the corporations, if  
15 they absolutely control it.

16 MR. RUSKIN: They are not  
17 officers or directors, Judge. They  
18 are the shareholders who own the  
19 company. The six manufacturers  
20 are the shareholders. They appoint  
21 a Board of Directors that controls  
22 the offices of that company.

23 And Mr. Giller is an officer of  
24 the company. But there's no  
25 employee of a cigarette

ALICE A. JANETSKY, CSR, RPR

689315812

116

1 manufacturer is an officer,  
2 director, agent or employee  
3 of LSI. They are the share-  
4 holders. They own the stock.

5 THE MASTER: So a lawyer  
6 who is employed on an exclusive  
7 basis by one of the Big Six,  
8 who has happens to be appointed  
9 to run LSI --

10 MR. RUSKIN: There is no  
11 such firm. It is all individual  
12 law firms. No lawyers from one  
13 of the Big Six companies is on  
14 the board.

15 THE MASTER: In other words  
16 they are not house counsel.

17 MR. RUSKIN: That's correct.

18 Q The point I am trying to clarify is, when I  
19 looked at the affidavit, I kind of got the  
20 impression that the cigarette manufacturers  
21 were completely divorced from LSI, that  
22 they had no officers, directors,  
23 agents or employees, that were an employee  
24 of a cigarette manufacturer, and while that  
25 may be technically correct, they are the

ALICE A. JANETSKY, CSR, RPR

689315813

117

1 sole shareholders of LSI, aren't they?

2 A So you wouldn't want to imply with this  
3 affidavit, that LSI wasn't under the control  
4 of the sole shareholders?

5 MR. RUSKIN: Asks for a  
6 legal conclusion as to the  
7 ownership. We have agreed that  
8 they are the sole shareholders,  
9 and they own the company. Now  
10 you are asking whether they  
11 control the company. They  
12 appoint a Board of Directors.

13 Q I was also asking what was his intention,  
14 as far as making this statement in an  
15 affidavit.

16 A This statement to the best of my knowledge  
17 is true. This statement resulted in this  
18 affidavit. And this affidavit resulted from  
19 an interview that I had with my counsel.  
20 And that is my belief, that this information  
21 should have been included in this affidavit,  
22 and states the truth. And I am not having a  
23 problem with it.

24 Q Wouldn't it also be helpful to state in there  
25 that the cigarette manufacturers were the

ALICE A. JANETSKY, CSR, RPR

689315814

118

1           sole shareholders of LSI?

2                           MR. KIRK: I think that  
3                           question is argumentative, Bill.  
4                           I don't think he can speculate  
5                           as to whether it would be helpful.  
6                           We have already stipulated they  
7                           are 100 percent shareholders, and  
8                           provided you with the book.

9                           MR. RUSKIN: Mr. Decker's  
10                          affidavit was filed with the  
11                          court a month ago. I think it  
12                          was reflected in Mr. Decker's  
13                          affidavit filed a month ago.

14       Q   Describe the procedures that the Literature  
15            Retrieval Division took to locate articles  
16            in foreign publications to fit the criteria,  
17            just briefly, the procedures that you used.

18       A   The procedures were exactly the same as  
19            were used for English language materials.

20       Q   So you mean that you learned about their  
21            existence in the same way.

22       A   Everything was exactly the same except that  
23            the journal that we received, or that we  
24            became aware of through some secondary  
25            source was not in English.

ALICE A. JANETSKY, CSR, RPR

689315815

119

1 Q I seem to recall that you collected and  
2 abstracted some conference proceedings that  
3 apparently contained information that fit  
4 your criteria. How did you go about  
5 collecting conference proceedings?

6 A Exactly the same manner.

7 Q How would you learn about the conference  
8 proceedings ?

9 A Conference proceedings that are scheduled  
10 are published in a variety of places.  
11 One need only look in those places.

12 Q At three i or Literature Retrieval Division,  
13 did you collect and abstract any materials  
14 pertaining to the Federal Trade Commission?

15 A Pertaining to the Federal Trade Commission?

16 Q Yes.

17 A I wouldn't know whether any articles  
18 pertained to the Federal Trade Commission.  
19 If the article was published in the medical  
20 literature that we subscribed to, and it  
21 fit the selection criteria, it would be  
22 selected.

23 Q You don't recall anything in the criteria  
24 or categories that included the Federal  
25 Trade Commission?

ALICE A. JANETSKY, CSR, RPR

689315816

120

1 A No.

2 Q Do you know if your criteria included  
3 anything pertaining to Congress, members of  
4 Congress, or congressional committees?

5 MR. RUSKIN: We are going  
6 to object on the grounds that  
7 what was in the criteria, we  
8 object to that on the grounds of  
9 work product.

10 (At this time plaintiffs'  
11 counsel withdrew from the  
12 room, and the Witness' answer  
13 was heard In Camera before the  
14 Master with counsel for the  
15 Witness and defense counsel in  
16 attendance.)

17 ---o0o---

18 (Plaintiffs' counsel having  
19 returned to the deposition room,  
20 the following proceedings were  
21 heard before the Master, with the  
22 Witness and all counsel present.)

23 Q Did your criteria and your SCOPE OF  
24 COVERAGE document include any subjects that  
25 would involve regulation of the tobacco

ALICE A. JANETSKY, CSR, RPR

689315817



121

1 industry?

2 MR. RUSKIN: Objection, work  
3 product.

4 MR. KIRK: Work product.

5 (At this time, plaintiffs'  
6 counsel withdrew from the  
7 deposition room and the Witness'  
8 answer was heard In Camera before  
9 The Master with counsel for the  
10 Witness and defense counsel in  
11 attendance.)

12 ---oOo---

13 (Plaintiffs' counsel having  
14 returned to the deposition room,  
15 the following proceedings were  
16 had before the Master, with the  
17 Witness and all counsel present.)

18 Q I am going to try -- I'll see if Dale has any  
19 questions. I will ask you the name of the  
20 person fired by the Literature Retrieval  
21 Division of CRT that then later sued CTR,  
22 that you referred to earlier?

23 MR. KIRK: Objection on the basis  
24 of irrelevancy.

25 MR. RUSKIN: It was not a

ALICE A. JANETSKY, CSR, RPR

689315818

122

1 work product objection. We  
2 objected.

3 MR. TOWNSLEY: The person may  
4 have some discoverable information.  
5 We are entitled to try to talk to  
6 anyone that has some, may want to  
7 give his deposition. But we are  
8 entitled to the identity.

9 MR. RUSKIN: Disgruntled.  
10 It's not In Camera.

11 A The name of that individual was Leon Dickerson,  
12 D-i-c-k-e-r-s-o-n.

13 Q What was his job title?

14 A I can't remember his exact title. He had  
15 responsibility for supervising the production  
16 of microfilm.

17 Q Does he live in New York?

18 A I don't know where he lives.

19 Q I have a few items of notes on questions  
20 that I deferred that were not answered  
21 the last time that I will try to cover  
22 as my last questions.

23 I would ask you to describe  
24 your duties as project officer at 3i  
25 in respect to 3i's contract with

ALICE A. JANETSKY, CSR, RPR

689315819

123

1 Covington & Burling.

2 MR. KIRK: It's been  
3 asked and answered. You got  
4 a complete answer on that,  
5 didn't you?

6 MR. HANKS: No. I think we  
7 deferred it.

8 MR. KIRK: Okay. Why don't  
9 you rattle the two or three off if  
10 you have got any others.

11 Q (By Mr. Townsley) Another objection that  
12 was made was that I had asked you about the  
13 3i materials that had been placed in the  
14 safety deposit boxes and safe. And an  
15 objection was made and I deferred it. And  
16 I think that you may have answered that  
17 today. So let me go ahead and ask you  
18 this. And you can tell me if the data and the  
19 materials that you previously described,, was  
20 that the same type of data that 3 -- was that  
21 the same type of data that was included in  
22 the material from 3i that was placed in these  
23 boxes or safes?

24 MR. KIRK: Same type as the  
25 material from LRD?

ALICE A. JANETSKY, CSR, RPR

689315820

124

1 Q Yes.

2 A Okay.

3 A Yes.

4 Q That would have been data, itself, and some  
5 of these materials on how to run LRD?

6 A Yes.

7 Q Only it would be materials on how to run 3i?

8 A That's correct.

9 Q Why don't we just have her to read back the  
10 question regarding the duties of the project  
11 officer.

12 MR. KIRK: Wait a minute,  
13 Bill. You just want to know what  
14 his duties as project officer at  
15 3i were. I don't think we have  
16 objection.

17 A My duties as project officer at 3i was to  
18 see that the 3i staff did what they were  
19 supposed to do in a manner very similar  
20 to what I did when I was administrator  
21 of LRD and then president of LS, Inc.  
22 There was less to do at that time, since  
23 the functions that 3i did were somewhat  
24 different from the functions that LRD did  
25 and somewhat different than the functions

ALICE A. JANETSKY, CSR, RPR

689315821

125

1 that LS. Inc. did. However, the overall  
2 responsibility was similar.

3 MR. TOWNSLEY: Your Honor,  
4 the only other items that I have  
5 pertain to procedures and so forth  
6 in my review. Because that's all  
7 the questions that I have of  
8 Dr. Giller.

9 MR. KIRK: We will reserve our  
10 questions until the time of trial,  
11 if necessary.

12 MR. HANKS: Could I ask one  
13 question? I am curious.

14  
15 EXAMINATION BY MR. HANKS:

16 Q You mentioned that you were under a  
17 nondisclosure agreement when you were at  
18 LRD; is that correct?

19 A Yes.

20 Q What was the penalty for the violation  
21 of that agreement?

22 A I don't remember the specific language of  
23 that agreement. But I do remember that  
24 I had agreed to injunctive relief in  
25 advance, and that there were possible

ALICE A. JANETSKY, CSR, RPR

689315822

126

1           punitive damages and so forth. I just  
2           recall.

3       Q    Were you receiving some type of deferred  
4           compensation while you were employed by  
5           CPR at LRD?

6       A    Deferred compensation?

7       Q    Yes, in addition to your salary.

8                       MR. TOWNSLEY: I believe that  
9                       would be all the questions we would  
10                      have of Dr. Giller. We might just  
11                      cover some procedural matters.

12                     MR. KIRK: In all of the  
13                     procedural statements that were  
14                     before the deposition started,  
15                     we forgot to state what our  
16                     stipulations would be as to  
17                     whether the depositions will be  
18                     taken under the rules, and  
19                     further, the witness would  
20                     sign the deposition notice of  
21                     filing, et cetera.

22                     Let me see if we can agree  
23                     on that.

24                     We would like the deposition  
25                     to be considered to be taken under

ALICE A. JANETSKY, CSR, RPR

689315823

127

1 the Texas Rules of Civil Procedure,  
2 and that the witness will be allowed  
3 to read and sign the deposition.  
4 If a signed original is not on  
5 file, then a copy can be utilized  
6 by, I suppose, the parties to the  
7 case at the time of trial.

8 And we waive notice of filing.  
9 We would like the record to reflect  
10 that we can sign the deposition  
11 before any notary, sohe won't have  
12 to come to HJouston to sign it.

13 And that the witness will  
14 read and sign the In Camera  
15 portion of the deposition. Of  
16 course, that portion will be  
17 sealed pursuant to our previous  
18 statements on the record regarding  
19 that.

20 MR. TOWNSLEY: I would say that  
21 we would just agree that the deposition  
22 has been taken in accordance with the  
23 Texas Rules of Civil Procedure and  
24 the witness can sign it before any  
25 authorized officer to take the

ALICE A. JANETSKY, CSR, RPR

689315824

128

1 deposition. We do not want to  
2 waive the filing of copy as  
3 required. We think it should be  
4 filed. However, it would be sealed  
5 and under a non-dissemination  
6 agreement.

7 MR. KIRK: If I said the filing  
8 of a copy, I didn't mean that. I  
9 said the original would be filed  
10 subject to the In Camera portion  
11 being sealed. And that portion that  
12 is not In Camera would not be  
13 disseminated publicly, pursuant to  
14 our previous agreement.

15 MR. TOWNSLEY: Mr. Hanks tells  
16 me that he has talked with a lawyer  
17 for CTR and in order to have a clear  
18 understanding that he is going to  
19 identify in proposed stipulation  
20 to you the actual exhibits and the  
21 page numbers and the transcript that  
22 will be subject to the understanding  
23 that was placed on the record  
24 earlier;

25 MR. KOELTL: That's correct.

ALICE A. JANETSKY, CSR, RPR

689315825



129

1 And that's part of the transcript and  
2 the exhibits also will be subject  
3 to the court order in Beaumont.

4 This is turned over to the  
5 Master and attached to it and  
6 made a part of the record,  
7 as I understand it.

8 MR. KIRK: Let's see if  
9 we can't try to synthesize this  
10 into what we have been rambling  
11 around. We have enumerated  
12 that we have taken the deposition  
13 pursuant to the Texas Rules of  
14 Procedure.

15 MR. TOWNSLEY: And the  
16 Rules of Procedure on the Order  
17 of Reference.

18 MR. KIRK: Yes, and that the  
19 witness will be allowed to read and  
20 sign both the Non-In Camera portion  
21 and the In Camera portion of the  
22 deposition before any notary  
23 authorized to take oaths in  
24 New York or wherever he wishes  
25 to sign, and that the original

ALICE A. JANETSKY, CSR, RPR

689315826

130

1 of the deposition will be filed.  
2 But it will be filed pursuant to  
3 the non-dissemination agreement  
4 regarding CPR and pursuant to  
5 our agreement regarding the  
6 non-dissemination order and  
7 the deposition, In Camera  
8 portion.

9 MR. TOWNSLEY: Subject to  
10 the rulings of the Master and  
11 perhaps the Judge later on, but  
12 we will continue not to -- we will  
13 continue to be bound not to  
14 disclose any of it until an  
15 appropriate authority tells us  
16 to the contrary.

17 MR. KIRK: That's correct.  
18 and that in particular, the  
19 In Camera portion will be kept  
20 under seal until it is for reason  
21 ordered to be disclosed by order  
22 of the highest court from which  
23 an appeal can be taken.

24 MR. KIRK: That's it.

25 MR. TOWNSLEY: As we

ALICE A. JANETSKY, CSR, RPR

689315827

131

1 understand it, Your Honor.  
2 Your Honor would understand  
3 that the Master has given us  
4 a notice that we are recessing  
5 the deposition now until all the  
6 discovery matters are resolved,  
7 at which time you will have it  
8 resumed.

9 THE MASTER: Yes, sir.

10 MR. KIRK: Wait a minute, Bill.  
11 You had better explain that.

12 MR. TOWNSLEY: I would think that  
13 that at some point when the rulings  
14 are made that both sides are going -- if  
15 any claims of privilege are overruled,  
16 that the witness will have an opportunity  
17 to either testify consistent with the  
18 Master's ruling or decline and file  
19 objections as the order of reference  
20 states with the Court.

21 MR. RUSKIN: He has answered the  
22 questions that have been objected to.  
23 They have been answered In Camera.

24 MR. TOWNSLEY: They have been  
25 answered in order to afford the Master

ALICE A. JANETSKY, CSR, RPR

689315828

132

1 and the Court an opportunity to pass  
2 on the merits of privilege. But  
3 they have not been answered by us.  
4 We would have questions to ask if  
5 at some time, if he is ordered,, if  
6 any objections are overruled, then  
7 we would be entitled to ask questions  
8 then.

9 MR. RUSKIN: The questions have  
10 been asked. And the deposition  
11 has been completed.

12 THE MASTER: When he says describe  
13 all the documents, if I order all that  
14 question to be answered, this answer  
15 he gave is not going to be enough.

16 MR. RUSKIN: So he has an  
17 opportunity to do so pursuant ---

18 THE MASTER: Resume.

19 MR. RUSKIN: Subject to your  
20 further order.

21 MR. Townsley: That's true.

22 MR. KIRK: I think the way to  
23 do it is that Fred Giller will conduct  
24 himself in accordance with any orders  
25 of the Courts that this case may be

ALICE A. JANETSKY, CSR, RPR

689315829

133

1                   appealed to.

2                   Should those courts enter any  
3                   orders regarding the necessity to  
4                   resume this deposition. But we are  
5                   not agreeing that he is going to be  
6                   here to resume the deposition except  
7                   for some court order.

8                   MR. TOWNSLEY: Just procedurally  
9                   and as a predicate for an appeal, if  
10                  on any of the areas we have asked  
11                  questions, if the claim of privilege  
12                  is overruled, ,then you have ten days  
13                  under the order of reference in which  
14                  to appeal it to the Judge.

15                  Then, of course, and then  
16                  when other appeals are available.  
17                  But if at some point -- and I  
18                  would want you to understand, at  
19                  some point after this is exhausted,  
20                  if there's any area as to which  
21                  the claim of privilege has been  
22                  denied, that we would expect to  
23                  resume the deposition in that  
24                  area, that these simply, these  
25                  answers are furnished merely to

ALICE A. JANETSKY, CSR, RPR

689315830

134

1 enlighten the decisionmakers on  
2 the privilege and are certainly  
3 not calculated to satisfy our  
4 discovery needs in the event we  
5 are entitled to pursue these other  
6 areas.

7 MR. KIRK: You have an  
8 opportunity to make any further  
9 objections to the Court that are  
10 consistent with the ultimate  
11 rulings in this matter.

12 MR. TOWNSLEY: Then deposition  
13 would resume if there is any area --

14 MR. KIRK: If the Court so  
15 ordered.

16 MR. TOWNSLEY: That's true as  
17 I understand it. Then again, I am  
18 looking at Paragraph 4 now, that we  
19 have, I gather under that, till  
20 August 18 that either party can  
21 file objections and responses.

22 THE MASTER: I really thought  
23 I was saving time. I really thought  
24 that. I was not. We hope that by  
25 August 18 everything that is

ALICE A. JANETSKY, CSR, RPR

689315831

135

1           supposed to be called to my attention  
2           before I am put in the position of  
3           ruling will be in my hands. Now, if  
4           you look at those subparagraphs, you  
5           realize that the responder have got  
6           to be given the time to respond before  
7           August 18. That is what I'm shooting  
8           at. I don't know whether it is  
9           possible.

10           Also, we discussed at some length  
11           that there should be a date that this  
12           is in my hands and everything I need  
13           to make a decision. Somebody can't  
14           come in the next day and hand me a  
15           40-page brief.

16           MR. TOWNSLEY: Then if we want  
17           to file anything, we have until that  
18           date to file it, and you will still  
19           consider it.

20           THE MASTER: If it seems to  
21           require a response from the other side,  
22           you ought to give them five days.

23           MR. TOWNSLEY: Except that if  
24           it's not in response, it should be  
25           filed by August 13, then.

ALICE A. JANETSKY, CSR, RPR

689315832

136

1 THE MASTER: Both sides, that's  
2 correct.

3 MR. STALLINGS: I assume that  
4 August 18 would also be a date for  
5 the tendering of the testimony in the  
6 Giller case.

7 MR. TOWNSLEY: I would say  
8 probably, Paul, it should be the  
9 13th in case the other side wants  
10 to respond to the tender of the  
11 evidence.

12 MR. STALLINGS: Whenever you  
13 to that point, Judge, you can set  
14 the date.

15 MR. TOWNSLEY: If I came in  
16 with some witnesses on the 18th,  
17 you might want to have some other  
18 witnesses.

19 MR. STALLINGS: I don't think  
20 we need five days.

21  
22  
23  
24  
25

ALICE A. JANETSKY, CSR, RPR

689315833



137

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

\_\_\_\_\_  
FREDERICK B. GILLER, The Witness

(STATE OF  
(COUNTY OF

Subscribed and sworn to before me, the undersigned  
authority, on this the \_\_\_\_ day of \_\_\_\_\_  
1986, by the witness, Frederick B. Giller.

\_\_\_\_\_  
Notary Public in and for

My commission expires: \_\_\_\_\_

ALICE A. JANETSKY, CSR, RPR

689315834

138

1 THE STATE OF TEXAS

2 I, the undersigned Certified Shorthand  
3 Reporter and Notary Public in and for the State of  
4 Texas, do hereby certify that the facts as stated  
5 by me in the caption hereto are correct; that the  
6 examination of the witnesses in said cause was  
7 correctly reported by me at the time and place and  
8 under agreement set forth shorthand into typewriting  
9 under my direction and supervision; and that said  
10 transcript is a correct record of the proceedings  
11 had at said time and place.

12 I further certify that I am neither attorney  
13 nor counsel for, nor related to, nor employed by any  
14 parties to this action, and that I am not a relative  
15 or employee of any counsel herein or financially  
16 interested in this case.

17  
18 ALICE A. JANETRSKY, CSR, RPR  
19 CSR NO. 517 Expires December 31, 1988  
20 Notary Commission Expires February 14, 1988

21 4400 Memorial Drive, No. 1048  
22 Houston, Texas 77007  
23 (713) 221 6384 (713) 868 6976

24 TAXABLE COST: \_\_\_\_\_

25 PAID BY: \_\_\_\_\_

ALICE A. JANETSKY, CSR, RPR

689315835